

YOSEMITE CONCESSION CONTRACT

JOINT OVERSIGHT HEARING
BEFORE THE
SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS
AND THE
SUBCOMMITTEE ON
NATIONAL PARKS, FORESTS AND PUBLIC LANDS
OF THE
COMMITTEE ON NATURAL RESOURCES
ONE HUNDRED THIRD CONGRESS
FIRST SESSION
ON
CONTRACTING PROCESS AND PROPOSED YOSEMITE CONCESSION
CONTRACT

HEARING HELD IN WASHINGTON, DC
MARCH 24, 1993

Serial No. 103-15

Printed for the use of the Committee on Natural Resources



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1993

73-649

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-041759-7

COMMITTEE ON NATURAL RESOURCES

GEORGE MILLER, California, *Chairman*

PHILIP R. SHARP, Indiana
EDWARD J. MARKEY, Massachusetts
AUSTIN J. MURPHY, Pennsylvania
NICK JOE RAHALL II, West Virginia
BRUCE F. VENTO, Minnesota
PAT WILLIAMS, Montana
RON DE LUGO, Virgin Islands
SAM GEJDENSON, Connecticut
RICHARD H. LEHMAN, California
BILL RICHARDSON, New Mexico
PETER A. DeFAZIO, Oregon
ENI F.H. FALEOMAVAEGA, American Samoa
TIM JOHNSON, South Dakota
LARRY LAROCCO, Idaho
NEIL ABERCROMBIE, Hawaii
CALVIN M. DOOLEY, California
CARLOS ROMERO-BARCELO, Puerto Rico
KARAN ENGLISH, Arizona
KAREN SHEPHERD, Utah
NATHAN DEAL, Georgia
MAURICE D. HINCHEY, New York
ROBERT A. UNDERWOOD, Guam
HOWARD L. BERMAN, California
LANE EVANS, Illinois
PATSY T. MINK, Hawaii
THOMAS J. BARLOW III, Kentucky
THOMAS M. BARRETT, Wisconsin

DON YOUNG, Alaska,
Ranking Republican Member
JAMES V. HANSEN, Utah
BARBARA F. VUCANOVICH, Nevada
ELTON GALLEGLY, California
ROBERT F. SMITH, Oregon
CRAIG THOMAS, Wyoming
JOHN J. DUNCAN, Jr., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
WAYNE ALLARD, Colorado
RICHARD H. BAKER, Louisiana
KEN CALVERT, California
SCOTT MCINNIS, Colorado
RICHARD W. POMBO, California
JAY DICKEY, Arkansas

JOHN LAWRENCE, *Staff Director*
RICHARD MELTZER, *General Counsel*
DANIEL VAL KISH, *Republican Staff Director*

SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS

BRUCE F. VENTO, Minnesota, *Chairman*

EDWARD J. MARKEY, Massachusetts
NICK JOE RAHALL II, West Virginia
PAT WILLIAMS, Montana
PETER A. DeFAZIO, Oregon
TIM JOHNSON, South Dakota
LARRY LAROCCO, Idaho
NEIL ABERCROMBIE, Hawaii
CARLOS ROMERO-BARCELO, Puerto Rico
KARAN ENGLISH, Arizona
KAREN SHEPHERD, Utah
MAURICE D. HINCHEY, New York
ROBERT A. UNDERWOOD, Guam
AUSTIN J. MURPHY, Pennsylvania
BILL RICHARDSON, New Mexico
PATSY T. MINK, Hawaii

JAMES V. HANSEN, Utah
Ranking Republican Member
ROBERT F. SMITH, Oregon
CRAIG THOMAS, Wyoming
JOHN J. DUNCAN, Jr., Tennessee
JOEL HEFLEY, Colorado
JOHN T. DOOLITTLE, California
RICHARD H. BAKER, Louisiana
KEN CALVERT, California
JAY DICKEY, Arkansas

RICHARD HEALY, *Staff Director*
CHARLES (STAN) SLOSS, *Counsel*
CHARLENE MCCARTNEY SEAMENS, *Clerk*
D. LEE FORSGREN, *Republican Counsel on Lands and Forestry*

(III)

SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

GEORGE MILLER, California, *Chairman*

SAM GEJDENSON, Connecticut

CALVIN M. DOOLEY, California

NATHAN DEAL, Georgia

PHILIP R. SHARP, Indiana

BRUCE F. VENTO, Minnesota

RICHARD H. LEHMAN, California

PETER A. DEFAZIO, Oregon

KARAN ENGLISH, Arizona

KAREN SHEPHERD, Utah

MAURICE D. HINCHEY, New York

NEIL ABERCROMBIE, Hawaii

LANE EVANS, Illinois

THOMAS M. BARRETT, Wisconsin

ROBERT F. SMITH, Oregon,

Ranking Republican Member

JAMES V. HANSEN, Utah

BARBARA F. VUCANOVICH, Nevada

JOHN J. DUNCAN, JR., Tennessee

JOHN T. DOOLITTLE, California

WAYNE ALLARD, Colorado

KEN CALVERT, California

RICHARD W. POMBO, California

JAY DICKEY, Arkansas

JOHN LAWRENCE, *Staff Director*

MARK TRAUTWEIN, *Professional Staff Member*

LINDA GORDON STEVENS, *Clerk*

TED CASE, *Republican Consultant on Oversight and Investigations*

CONTENTS

	Page
Hearing held: March 24, 1993	1
Member statements:	
Hon. George Miller	1
Hon. Robert F. Smith	2
Hon. Bruce F. Vento	3
Hon. Richard H. Lehman	5
Hon. James V. Hansen	6
Hon. Wayne Allard	7
Hon. Craig Thomas	7
Witness statements:	
John H. Davis, Associate Director, Operations, National Park Service, Department of the Interior, accompanied by Lars Hanslin, Attorney Adviser, Department of the Interior, and Michael Finley, Superintend- ent, Yosemite National Park	8
Panel consisting of:	
Richard Martyr, Chairman of the Board, Yosemite Restoration Trust Services Corporation	98
Donald S. Green, Executive Director, Yosemite Restoration Trust, on behalf of YRT Services Corporation	105
Randolph C. Read, President, Yosemite Park Services, L.P., accom- panied by William O'Brien, Keck, Mahin & Cate	134
Panel consisting of:	
Debbie Sease, Sierra Club	165
Dean Malley, Yosemite Coalition	173
Paul C. Pritchard, President, National Parks and Conservation Asso- ciation, accompanied by Richard Busse, Economic Consultant	175
Ronald J. Tipton, Deputy Vice-President for Field Programs, The Wilderness Society, accompanied by Joan Reiss, Regional Director, California/Nevada Office, The Wilderness Society	184
Material submitted for the hearing record from:	
Department of the Interior:	
1. December 17, 1992, evaluation document regarding review of Yo- semiter Concession Contract Offers	17
2. Statement of Requirements, Prospectus, Phase I, Yosemite Hotel Services [Editor's note.—This document in its entirety may be found in the archival file.]	34
3. List of concession contracts which have government improvement accounts or capital improvement funds	63
4. Letter to Congressman Dingell in response to the GAO Report, "Issues Involved in the Sale of the Yosemite National Park Con- cessioner"	82

APPENDIX

MARCH 24, 1993

Additional material submitted for the hearing record from:

Committee on Natural Resources, Subcommittee on National Parks, For- ests and Public Lands:	
1. Background information on contracting process and proposed con- tract for Yosemite National Park concessions	197
2. News release concerning March 24 hearing	204
3. Letter to Herbert S. Cables, Jr., Acting Director, National Park Service, dated March 29, 1993, with post-hearing questions	205

4. Response to Chairman Vento from Mr. Cables dated April 12, 1993	207
National Park Hospitality Association: Prepared statement	210
Robert Redford: Prepared statement	216
Yosemite Park Services, L.P.: Prepared statement of Randolph C. Read and attachments	218
The Wilderness Society: Letter to Ms. Joan Reiss from Morrison & Foerster regarding merger agreement dated September 10, 1991, between National Park Foundation, Yosemite Park and Curry Company, and MCA Inc. related to Yosemite concession	258

CONTRACTING PROCESS AND PROPOSED YOSEMITE CONCESSION CONTRACT

WEDNESDAY, MARCH 24, 1993

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, AND SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS, COMMITTEE ON NATURAL RESOURCES,

Washington, DC.

The subcommittees met, pursuant to notice, at 10 a.m., in room 1324, Longworth House Office Building, Hon. George Miller and Hon. Bruce F. Vento (chairman of the subcommittees) presiding.

OPENING STATEMENT OF HON. GEORGE MILLER

Mr. MILLER. The committee will come to order for the purposes of conducting a joint oversight hearing between the National Parks Subcommittee and the Subcommittee on Oversight and Investigations. I would like to thank everyone for coming today to this very important oversight hearing.

Today the Subcommittee on Oversight and Investigations and the Subcommittee on National Parks, Forests and Public Lands will examine that status of the new concessions contract for Yosemite National Park. With revenues expected to exceed \$1 billion over the 15-year life of the contract, it is the largest concessions contract involving the National Park Service. More importantly, it is central to the much-debated future of one the great parks on earth, its resources, and the ability of our citizens to experience and enjoy it.

The current contract with the Yosemite Park and Curry Company will expire on September 30 of this year. Last April, the National Park Service began a competitive bidding process for the new contract. This process would be unique in park experience because the then-Secretary of the Interior, Manuel Lujan, and the National Park Foundation negotiated an agreement whereby all assets and liabilities of the YPC would be acquired from its parent company and transferred to the Park Service. The \$61.5 million buy-out is to be financed by the next concessioner.

With the removal of possessory interest and preferential right of renewal, a truly competitive bidding process was begun.

By November 1992, the Park Service had qualified six bidders for the contract. A selection panel, consisting largely of National Park Service officials, reviewed the bids. On December 17, the chairman of the panel advised the National Park Service deputy director that the Delaware North Company of Buffalo, New York, had been selected as the best overall and the only one to be deemed satisfactory on all selection criteria.

The same day Secretary Lujan and Director Ridenour concurred in the selection of Delaware North.

By law, Secretary Bruce Babbitt cannot sign this contract until he has transmitted it to Congress and waited for a period of 60 days. No action by the Congress is required during the 60-day period in order for the Secretary to proceed. To date, however, the Secretary has not transmitted the proposed contract.

Today's joint oversight hearing is intended to provide the opportunity for the subcommittees and our witnesses to discuss the process by which this concessions contract was considered and the implications both for Yosemite and for concessions contracts throughout the Park System and what would be the most appropriate course of action from here on.

I look forward to hearing the testimony of all witnesses.

[Prepared statement of Mr. Miller follows:]

STATEMENT OF HON. GEORGE MILLER, CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS

I would like to thank everyone for coming today to this very important oversight hearing.

Today, the Subcommittee on Oversight and Investigations and the Subcommittee on National Parks, Forests, and Public Lands will examine the status of a new concessions contract for Yosemite National Park. With revenues expected to exceed one billion dollars over the 15-year life of the contract, it is the largest concessions contract involving the National Park Service. More importantly, it is central to the much-debated future of one of the great parks on Earth, its resources and the ability of our citizens to experience and enjoy it.

The current contract with the Yosemite Park and Curry Company will expire on September 30 of this year. Last April, NPS began the competitive bidding process for the new contract. This process would be unique in park experience because then-Secretary of the Interior Manuel Lujan and the National Park Foundation negotiated an agreement whereby all assets and liabilities of YPC would be acquired from its parent company and transferred to the Park Service. The \$61.5-million buy-out is to be financed by the next concessioner.

With the removal of possessory interest and preferential right of renewal, a truly competitive bidding process was begun.

By November, 1992, the Park Service had qualified six bidders for the contract. A selection panel, consisting largely of NPS officials, reviewed the bids. On December 17, the chairman of the panel advised the NPS Deputy Director that the Delaware North Corporation of Buffalo, New York had been selected as best overall and the only one to be deemed satisfactory on all selection criteria.

The same day, Secretary Lujan and NPS Director Ridenour concurred in the selection of Delaware North.

By law, Secretary Bruce Babbitt cannot sign this contract until he has transmitted it to Congress and waited for a period of 60 days. No action by the Congress is required during the 60-day period in order for the Secretary to proceed. To date, however, the Secretary has not transmitted the proposed contract. Today's joint oversight hearing is intended to provide an opportunity for the subcommittees and our witnesses to discuss the process by which this concessions contract was considered, its implications both for Yosemite and for concessions contracts throughout the park system and what would be the most appropriate course of action from here.

I look forward to hearing the testimony of all the witnesses today.

Mr. MILLER. Mr. Smith.

STATEMENT OF HON. ROBERT F. SMITH

Mr. SMITH. Thank you, Mr. Chairman.

I noticed in the committee press release to announce this hearing that we are going to examine the process in which the, quote, Bush administration, sought and evaluated bids for a new Yosemite concessions contract.

This raises questions for me about the real purpose of today's hearing. If we are here to talk about the process in which the Interior Department selected the new program at Yosemite, then this hearing might be a productive exercise. My fear is that we may be here for ulterior purposes.

Perhaps we are here trying to find fault with the "Republican administration" or possibly to let the environmental groups that didn't get the concessions contract the opportunity to cry foul. I question the logic in this, particularly when the selection process is now in the midst of litigation. I also found it interesting that the President's nominee as assistant secretary for parks is a former head of one of the parties in this lawsuit, The Wilderness Society.

It is my understanding that the Interior Department's handling of this selection process was professional and entirely appropriate. The Delaware North Company was put through an exhaustive and fair competitive bid system and was awarded the contract based upon merit.

Mr. Chairman, I look forward to the testimony, and I look forward to looking at the process, and let's determine whether it's proper or not. Thank you.

Mr. MILLER. Mr. Vento.

STATEMENT OF HON. BRUCE F. VENTO

Mr. VENTO. Thank you, Mr. Chairman. I am, of course, pleased to join in convening the joint oversight hearing of Natural Resources subcommittees on this important matter.

In recent years, there has been an increased interest and concern over the related subjects of the future of the concession operations in Yosemite National Park and in the National Park System generally.

As members who served in the last Congress will recall, hearings were held both on legislative proposals to revise the National Park Service Concessions Policy Act of 1965 and on developments affecting the future of Yosemite Park and Curry Company and its extensive operations in Yosemite.

Former Secretary Lujan was instrumental in shaping an agreement for the sale of the Yosemite Park and Curry Company and the subsequent transfer of its stock to the National Park Foundation. Under the purchase agreement, the Foundation is, in effect, to be merely a middle man and will in turn transfer the stock of Yosemite Park and Curry Company to the firm awarded the Yosemite concession contract for the, I believe, 15-year period after September 30 of this year. That firm, which the National Park Service recommends be Delaware North, Incorporated, would be responsible for paying the previously agreed purchase of \$49.5 million plus interest, a total of \$61.5 million, negotiated by the Department of the Interior with Matsushita and the present owner.

As you know, Mr. Chairman, in addition to the actions on the Yosemite concessions contract, the previous administration, in the person of Secretary Lujan, did favor revising concessions policy administratively, while opposing proposals to amend the law. Secretary Lujan acted to develop and put in place revised regulations for Park Service concessions management generally. They were

held up for some time by the President's election-year freeze on new regulations, but they did finally go into effect.

I believe that the changes in regulations were sound and desirable, but I also believe that we should seriously consider going further through enactment of legislation to revise the 1965 Concessions Policy Act.

While this is an oversight hearing today, not a legislative hearing, I am hopeful that this hearing will be valuable in providing a better understanding of not only the Yosemite concessions operation in particular, but how concessions policy in general has been shaped by particular provisions of the 1965 Act, especially those related to concessioners' possessory interest and their preferential rights of renewal.

I look forward to gaining a clearer picture of the process that led to the previous administration's selection of a new concessioner for Yosemite and what the implications of that proposed new Yosemite concession contract may be for future management of that very important park and for the National Park System as a whole.

I do not think that you can necessarily separate the process from the substance of the contract and/or policy implications for Yosemite and/or the National Park Service. I think that will become clear as we begin to review the issue of process today.

Today's hearing is also intended to enable both Secretary Babbitt and our committee, the Natural Resources Committee, to hear in advance from parties who have specific concerns about the proposed Yosemite concessions contract before any such proposed contract is submitted to us for the review period required by law, the 60 days that the chairman spoke of.

Secretary Babbitt is to be commended for his willingness to cooperate in this way, and I look forward to working closely with him and others in the administration to achieve further improvements in national park policy concessions and management.

It may well be that we will want to conduct further oversight, through a hearing or perhaps in other ways, after the proposed new Yosemite concessions contract is submitted by the Secretary. I do expect that we will be considering legislative proposals on concessions policy in general in due course.

In the meantime, we have an opportunity and responsibility for greater involvement in the decision making concerning specific matters that are the subject of today's hearing. I join you, Mr. Chairman, in welcoming the witnesses, and I look forward to hearing their testimony and having the opportunity to ask questions about what they have to tell us.

Finally, Mr. Chairman, I suggest that we should ask Mr. Davis to remain until the end of the hearing today in case there is a desire to provide an opportunity for the National Park Service to respond to points made by other witnesses. I think it would be very helpful rather than to have those questions unanswered at the conclusion of this hearing.

[Prepared statement of Mr. Vento follows:]

OPENING STATEMENT OF CHAIRMAN BRUCE F. VENTO, JOINT OVERSIGHT HEARING ON CONTRACTING PROCESS AND PROPOSED YOSEMITE CONCESSIONS CONTRACT

Mr. Chairman, I am glad to join you for this joint oversight hearing of our two subcommittees on this important matter.

In recent years, there has been increased interest and concern over the related subjects of the future of concession operations in Yosemite National Park and in the National Park System generally.

As members who served in the last Congress will recall, hearings were held both on legislative proposals to revise the National Park Service Concessions Policy Act of 1965 and on developments affecting the future of the Yosemite Park and Curry Company and its extensive operations in Yosemite.

Former Interior Secretary Lujan was instrumental in shaping an agreement for the sale of the Yosemite Park and Curry Company and the subsequent transfer of its stock to the National Park Foundation. Under that agreement, the foundation in effect is to be merely a middleman, and will in turn transfer the stock of Yosemite Park and Curry Company to the firm awarded the Yosemite concession contract for the 15 year period after September 30 of this year. That firm, which the National Park Service recommends be Delaware North Inc. would be responsible for paying the previously agreed purchase of \$61.5 million negotiated by the Department of the Interior with MCA, Inc., the present owner.

As you know, Mr. Chairman, in addition to its actions on the Yosemite concessions contract, the previous administration, in the person of Secretary Lujan, did favor revising concessions policy administratively, while opposing proposals to amend the 1965 law. Secretary Lujan acted to develop and put in place revised regulations for National Park Service concessions management generally. Those were held up for some time by President Bush's election-year "freeze" on new regulations, but they did finally go into effect.

I believe that the changes in regulations were sound and desirable. But I also believe that we should seriously consider going further, through enactment of legislation to revise the 1965 concessions policy act.

While this is an oversight hearing, not a legislative hearing, I am hopeful that this hearing will be valuable in providing a better understanding of not only the Yosemite concessions operation in particular but how concessions policy in general has been shaped by particular provisions of the 1965 Act, especially those related to concessioners' possessory interests and their preferential rights of renewal.

I look forward to gaining a clearer picture of the process that led to the previous administration's selection of a new concessioner for Yosemite, and what the implications of the proposed new Yosemite concession contract may be for the future management of that particular park and for the National Park System as a whole.

Today's hearing also is intended to enable both Secretary Babbitt and our committee to hear in advance from parties who have specific concerns about the proposed Yosemite concessions contract, before any such proposed contract is submitted to us for the review period required by law. Secretary Babbitt is to be commended for his willingness to cooperate in this way, and I look forward to working closely with him and others in the administration to achieve further improvements in National Park concessions management and policies.

It may well be that we will want to conduct further oversight—through a hearing or perhaps in other ways—after the proposed New Yosemite concessions contract is submitted by the Secretary. I do expect that we will be considering legislative proposals on concessions policy in general in due course.

In the meantime, we have an opportunity and a responsibility for greater involvement in the decisionmaking concerning the specific matters that are the subject of today's hearing. I join you in welcoming our witnesses, and I look forward to hearing their testimony and to have the opportunity to ask questions about what they have to tell us.

Finally, Mr. Chairman, I suggest that we should ask Mr. Davis to remain until the end of the hearing, in case there is a desire to provide an opportunity for the National Park Service to respond to points made by other witnesses.

Mr. MILLER. My understanding is that Mr. Davis has agreed to do that.

Mr. Lehman.

STATEMENT OF HON. RICHARD H. LEHMAN

Mr. LEHMAN. Thank you very much, Mr. Chairman.

As you know, I have a keen interest in this discussion this morning. I certainly appreciate your having this hearing. This is of major importance and great concern in my district, which includes about 80 percent of Yosemite National Park.

I will be very brief. The key things I want to know this morning are: first, how the terms of the contract will affect Yosemite and management of that great resource there, how it will interface with the future plans for Yosemite and how they have been taken into consideration; and second, how it will affect Department policy with respect to other contracts Mr. Vento alluded to. Are we breaking new ground here, establishing precedent? What does this mean in the overall scheme of things?

With respect to the contract itself, having been engaged in many discussions with various parties concerning it over the past few months, I think most of my concerns have been dispelled; but I will listen this morning. The one great concern I do have is being sure that the terms of the contract are such that they can be fulfilled and carried out, that the contract that is signed and agreed to is one that will stand permanently and not one that will have to be renegotiated in the future.

I will have a lot of questions today. I look forward to the testimony. Thank you.

Mr. MILLER. Thank you.

Mr. Hansen.

STATEMENT OF HON. JAMES V. HANSEN

Mr. HANSEN. Thank you, Mr. Chairman.

I certainly agree with you on the importance of concession operations and the critical role they fulfill in providing for visitor use of our great national parks and other Federal lands.

I also support the objective of fair and open competition at the time of concession contract renewal, and it certainly appears to me that the process used by the National Park Service to select the new concessioner at Yosemite National Park met that test.

I would add, though, that the objective of more competition simply to improve the financial return to the Federal Government should not be allowed to displace the more important objective of providing quality service to park visitors at a reasonable cost.

At this point in time, I do not see the need for a rewrite of concession laws. I believe that anyone in this room can attest to the overall quality of service provided by current concessioners. Combined with changes made during the last administration, I believe that the American public can now be assured of a reasonable return on the concession operations.

I agree with the chairman that this Yosemite concession contract is of a magnitude which deserves the attention of this committee. However, the timing of today's hearing is somewhat questionable.

First, the contract has not even been sent to the Hill so that Members only have the broadest information about it.

Second, perhaps even more importantly, this hearing has the potential to impact ongoing litigation. It is my understanding that the judge is about to rule in favor of the Government with respect to the selection of the Delaware North Company, and I am referring to a memorandum from the director of the National Park Service. I would hope this hearing will not be used by those who failed in their attempt to win the bid to undermine the case of the Government. In fact, Mr. Chairman, I think it is very dangerous to get into this type of hearing when we have ongoing litigation.

As a past member, if I may parenthetically, for 12 years on the Ethics Committee, I would think that some people involved in this who are about to take positions in this new administration should look very carefully at the Ethics in Government Act.

Thank you very much, Mr. Chairman.

Mr. MILLER. Thank you.

Any other statements on this side?

Mr. ALLARD.

STATEMENT OF HON. WAYNE ALLARD

Mr. ALLARD. Thank you, Mr. Chairman.

I would just like to associate myself with the comments of both Congressman Smith and Congressman Hansen.

In addition to that, I am looking forward to hearing the testimony and suggestions on what we might do to improve the process in selecting a concessioner.

I also hope that we can begin to clear up any allegations of conflict of interest with the appointment of the new assistant secretary of the Interior Department whose purpose will be to oversee fish and wildlife.

Then the third comment. One thing I know I do not want to see happen is that I do not want to see the Government itself running the concession process. I think that it ought to continue to be bid out and made available for the private sector. I think we just need to improve that process to make sure that whoever is selected in the private sector is done in an objective and fair manner.

Thank you, Mr. Chairman.

Mr. MILLER. Thank you.

Mr. Thomas.

STATEMENT OF HON. CRAIG THOMAS

Mr. THOMAS. Just very briefly, Mr. Chairman. I will not go over what has already been said.

I just want to make the comment that I am very interested and very involved in concessioner contracts, as a matter of fact, and am very aware that they are so different. I hope that we do not talk about establishing a one-size-fits-all kind of thing here when some are climbing schools, some are ranches, some are very different in size and scope than what we are talking about here. So, I hope we keep that in mind as we devise a policy.

Thank you, sir.

Mr. MILLER. Thank you.

Any other opening statements?

[No response.]

Mr. MILLER. If not, our first panel will be Mr. John A. Davis, associate director of park operations for the National Park Service in the Department of the Interior, accompanied by Mr. Lars Hanslin, who is the attorney adviser, Department of the Interior; and Mr. Mike Finley, who is the superintendent of Yosemite National Park. Come forward. Welcome. Welcome to the committee.

Your printed statements will be put in the record in their entirety. You can proceed, Mr. Davis, in the manner in which you are most comfortable.

STATEMENT OF JOHN H. DAVIS, ASSOCIATE DIRECTOR, OPERATIONS, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY LARS HANSLIN, ATTORNEY ADVISER, DEPARTMENT OF THE INTERIOR, AND MICHAEL FINLEY, SUPERINTENDENT, YOSEMITE NATIONAL PARK

Mr. DAVIS. Thank you, Mr. Chairman. It is, indeed, a privilege to be with you this morning to discuss the new proposed concessions contract for Yosemite National Park.

The award of this contract for commercial visitor services in Yosemite is a significant element in the effort being undertaken by the park to realize the implementation of the 1980 general management plan. These elements reflect the GMP goals concerning the number or amount of overnight accommodations and other services, employee housing, and traffic levels.

The first effort was a reevaluation of the 1980 Yosemite plan objectives for concession services in the park. This was a public process that took one year and involved four public meetings.

The second effort concerns a question left unanswered in the GMP, and that is, what employees should live in the park and where those employees should be located? This effort is in the development stage and has been brought through the public comment period.

The third effort is the transportation plan for Yosemite Valley that will reduce vehicular traffic and congestion. Preliminary work on this subject has begun, but it is expected to take several more years to complete.

The fourth effort is the proposed concession contract for operations in Yosemite, which we are here today to discuss. The proposed concession contract incorporates the concession services plan and the housing plan, as it now appears in draft. These are important goal-setting documents.

The purpose of the proposed concession contract is to reorganize the concession facilities in a manner described in the concession services plan and the housing plan. This will require demolition, construction, and the rehabilitation of both historic and nonhistoric facilities. It may cost as much or more than \$100 million over the life of the 15-year contract. This work will be financed through a capital commitment made by the proposed new concessioner.

Benefits expected under this proposed contract include a 15.2 percent reduction park-wide in visitor lodging, with remaining lodging updated and made more efficient. Dining seats will increase from 2,700 to 2,830. Shuttle service will increase in frequency of service. The concessioner headquarters and maintenance facilities will be moved out of the valley. Sales facilities for groceries and gifts will be consolidated to lessen the impact on the park.

And the contract will result in relinquishment of possessory interest in the existing concession facilities and the concessioner will not retain possessory interest in the new development.

The term of the contract has been reduced from 30 to 15 years.

We estimate that the collective value of these and other changes to result in a return to the Government of approximately 20.2 percent of the concessioner's annual gross receipts.

The current concession contract for the hotel and other services expires on September 30.

The effort to select a new concessioner was conducted in two phases. Phase I was the selection of applicants preliminarily considered to meet principal selection factors of related experience and financial capability to undertake the obligations of the new concession contract. Phase II was the selection of the best offer submitted from among the applicants qualified under Phase I.

The Phase I prospectus was issued on April 6, 1992, and 12 applicants were determined by the National Park Service in Phase I as qualified to submit offers in Phase II. The Phase II prospectus was issued on July 15, 1992, and offers were to be submitted and were by November 16, 1992. Six offers were received in this competitive process.

A 10-person evaluation panel was assembled on December 1, 1992, for the purpose of analyzing the offers and the preparation of a summary of the respective responses. A selection panel was established to review the work of the evaluation panel, review the offers, and select the best overall proposal received for award of the contract. The best proposal was described in the prospectus as that offer which is considered most likely to effectively achieve the objectives of the National Park Service for concession services and facilities in Yosemite National Park, as stated in the prospectus and related documents. Since this was a competitive process, the responses submitted from the competitors by November 16 had to be complete and stand on their respective merits.

All offers, except one considered nonresponsive, were determined satisfactory in regard to the principal factor of experience and related background. The results of the evaluation of financial ability and conformance to the terms and conditions of the prospectus were more varied. Several of the offers did not contain the required compelling evidence of an ability to provide \$12 million of initial equity capital, and several were conditioned on substantive changes to the proposed concession contract for the benefit of the offeror, including shifting of environmental liabilities, contrary to the terms of the prospectus.

Only one offer, that of Delaware North Companies, was determined to meet all the principal selection factors. The Delaware North offer was clearly the best overall offer in the opinion of the selection panel and was selected on December 17, 1992, for negotiation of the final concessions contract. In this regard, Delaware North Companies demonstrated strong financial and management capability, is experienced in the type of operations conducted in Yosemite, and agreed, without limitation, to commit between 4½ and 5 percent of its gross revenues for the purposes of implementation of the concessions services plan. This is estimated to total between \$90 million and \$100 million over the term of the contract.

I would like to submit for the record—and I have already done so—a copy of our December 17, 1992, evaluation document which provides full details as to our reasons for selecting Delaware North as having submitted the best overall offer.

When the contract is fully executed, Delaware North will take over concession operations at Yosemite on September 29, 1993. This is the first major contract signed under our new concession management regulations, and the realization of this contract will represent a great day in the history of Yosemite National Park and

in concessions management generally throughout the National Park System.

Mr. Chairman, this concludes my testimony, and I would be happy to answer any questions you may have along with the assistance of Mr. Finley and Mr. Hanslin.

[Prepared statement of Mr. Davis and attachment follow:]

STATEMENT OF JOHN H. DAVIS, ASSOCIATE DIRECTOR, OPERATIONS, NATIONAL PARK SERVICE, DEPARTMENT OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, AND THE SUBCOMMITTEE ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS, HOUSE COMMITTEE ON NATURAL RESOURCES, CONCERNING THE PROPOSED CONCESSIONS CONTRACT FOR YOSEMITE NATIONAL PARK.

March 24, 1993

Thank you for the opportunity to appear before you to discuss the National Park Service's proposed new concession contract for the principal concession operations at Yosemite National Park.

The award of this contract for commercial visitor services in Yosemite is a significant element in the effort being undertaken by the park to realize the implementation of the 1980 General Management Plan (GMP). These elements reflect the GMP goals concerning the number or amount of overnight accommodations and other services, employee housing, and traffic levels.

The first effort was a reevaluation of the 1980 Yosemite GMP objectives for concession services in the park. This was accomplished through the development of an amendment to the GMP called the Concession Services Plan and included the preparation of an Environmental Impact Statement. This was a public process that took a year and involved four public meetings and the review of hundreds of written comments.

The second effort concerns a question left unanswered in the GMP: What employees should live in the park, and where employee

housing should be located. This effort, known as the Yosemite Housing Plan, is in development and has been through the public comment period.

The third effort is a transportation plan for Yosemite Valley that will reduce vehicular traffic and congestion. Preliminary work on this subject has begun, but it is expected to take several more years.

The fourth effort is the proposed concession contract for operations in Yosemite, which we are here to discuss today. The proposed concession contract incorporates the Concession Service Plan and the Housing Plan (the draft now and the final when completed) as important goal-setting documents.

Concession operations at Yosemite National Park include visitor services encompassing a hotel, other lodging, camping, dining, and purchase of supplies, groceries, and souvenirs. The purpose of the proposed concession contract is to reorganize the concession facilities in the manner described in the Concession Services Plan and the Housing Plan. This will require demolition, construction, and the rehabilitation of both historic and non-historic facilities. It may cost as much or more than \$100 million over the life of the 15-year concession contract. It is significant to note that this work will be financed through a capital commitment made by the proposed new concessioner.

Benefits expected under this proposed contract include a 15.2% reduction parkwide in visitor lodging, with remaining lodging updated and made more efficient. Dining seats will increase from 2700 to 2830. Shuttle service will increase in frequency of service and areas served. The concessioner headquarters, and maintenance facilities, will be moved out of the valley. Sales facilities for groceries and gifts will be consolidated to lessen the impact on the park. Significant maintenance activities will be covered by the new concessioner. And the contract will result in relinquishment of possessory interest in the existing concession facilities, and the concessioner will not retain possessory interest in the new development. The term of the contract is reduced from 30 years to 15 years, creating greater flexibility to meet changing conditions. We estimate the collected value of these and other changes to result in a return to the government of 20.2 percent of the concessioners annual gross receipts.

The current concession contract for hotel and other services for Yosemite National Park expires on September 30, 1993. Under an arrangement facilitated by the National Park Foundation, the National Park Service undertook in 1992 a procedure to select a new concessioner. The National Park Service effort to select the new concessioner was conducted in two phases: Phase I was the selection of applicants preliminarily considered to meet the

principal selection factors of related experience and financial capability to undertake the obligations of the new concession contract. Phase II was the selection of the best offer submitted from among applicants qualified under Phase I.

The Phase I prospectus was issued on April 6, 1992. Twelve applicants were determined by the National Park Service in Phase I as qualified to submit offers in Phase II. The Phase II prospectus was issued on July 15, 1992, and offers were to be submitted by November 16, 1992. Six offers were received in this competitive process.

A 10 person evaluation panel was assembled on December 1, 1992, for analysis of the offers and the preparation of a summary of the respective responses. A selection panel was established to review the work of the evaluation panel, review these offers and select the best overall proposal received for award of the contract. The "best proposal" was described in the prospectus as that offer which is considered most likely to effectively achieve the objectives of the National Park Service for concession services and facilities in Yosemite National Park as stated in the prospectus and related documents. In addition to conformance to the terms and conditions of the prospectus, the principal factors considered in the selection of the best proposal were the experience, related background, and financial capability of the offeror. Since this was a competitive process, the responses

submitted from the competitors by November 16, 1992, had to be complete and stand on their respective merits.

All the offers, except one considered non-responsive, were determined satisfactory in regard to the principal factor of experience and related background. The results of the evaluation of financial ability and conformance to the terms and conditions of the prospectus were more varied. Several of the offers did not contain the required compelling evidence of an ability to provide \$12 million of initial equity capital, and several were conditioned on substantive changes to the proposed concession contract for the benefit of the offeror, including shifting of environmental liabilities, contrary to the terms of the prospectus.

Only one offer, that of Delaware North Companies, Inc., was determined to meet all the principal selection factors. The Delaware North offer was clearly the best overall offer in the opinion of the selection panel and was selected on December 17, 1992, for negotiation of the final concession contract. In this regard, Delaware North Companies, Inc. demonstrated strong financial and management capability, is experienced in the type of operations conducted at Yosemite, and agreed, without limitations, to commit between 4 1/2% and 5% of its gross revenues for the purposes of implementation of the Concessions Services Plan. This is estimated to total between \$90 - \$100

million over the term of the contract. I would like to submit for the record a copy of our December 17, 1992, evaluation document which provides full details as to our reasons for selecting Delaware North Companies, Inc., as having submitted the best overall offer.

The National Park Service is in the process of negotiating final contract terms with Delaware North Companies, Inc. and anticipates forwarding it to Secretary Babbitt in the near future for submittal to the Congress for the required 60 day waiting period before final execution. When the contract is fully executed, Delaware North Companies, Inc., will take over concession operations at Yosemite on September 29, 1993.

This is the first major contract signed under our new concession management regulations, and the realization of this contract will represent a great day in the history of Yosemite National Park and in concessions management generally throughout the National Park System.

This concludes my testimony, Mr. Chairman, and I would be happy to answer any questions you may have.



United States Department of the Interior

NATIONAL PARK SERVICE

P.O. BOX 37127
WASHINGTON, D.C. 20013-7127



IN REPLY REFER TO

Memorandum

December 17, 1992

To: The Deputy Director
From: Chairman, Selection Panel for the Yosemite
Concession Contract, Hotel and Other Services
Subject: Review of Yosemite Concession Contract Offers

BACKGROUND.

The current concession contract for hotel and other services for Yosemite National Park expires on September 30, 1993. Under an arrangement facilitated by the National Park Foundation, the National Park Service is presently in the position of being able to select a concessioner for the new concession contract on a competitive basis. The NPS process to select the new concessioner is being conducted in two phases. Phase I was the selection of applicants initially meeting the principal selection factors of related experience and financial capability to undertake the obligations of the new concession contract. Phase II is the process whereby applicants qualified under Phase I and which submit a responsive offer in conformance to the terms and conditions of the Phase II prospectus are further evaluated to select the best overall offer submitted.

The Phase I prospectus was issued on April 6, 1992. Twelve applicants were determined by NPS in Phase I as qualified to submit offers in Phase II. The Phase II prospectus was issued on July 15, 1992, and offers were submitted by November 16, 1992. Six offers were received as follows:

Amfac Resorts, Inc.
California Natural Resources Management, Inc.
Delaware North Companies, Inc.
TW Recreational Services, Inc.
Yosemite Park Services, L.P.
YRT Services Corporation

The Yosemite Concession Selection Panel was established to review these offers and select the best overall proposal received for award of the contract. The "best proposal" is described in the prospectus as that offer which is considered most likely to effectively achieve the objectives of the National Park Service for concession services and facilities in Yosemite National Park as stated in the prospectus and related documents. In addition to conformance to the terms and conditions of the prospectus, the principal factors to be considered in the selection of the best proposal are the experience, related background and financial

capability of the offeror. These principal factors are set forth in the Phase I prospectus Selection Criteria. Particularly, Phase I applicants had to demonstrate substantial competence to operate a complex, service-oriented business and demonstrate with reasonable assurance the ability to provide not less than \$12 million initial equity capital. The five Parts of the additional Selection Criteria contained in the Phase II prospectus contain more specific criteria related to these principal factors (Part II and Part V Selection Criteria) and a variety of secondary criteria, including the level of the offeror's concession facility financial commitments (Selection Criterion 16), Equal Opportunity programs (Selection Criterion 9), and, the offeror's understanding and commitment to the preservation and interpretation of the resources of Yosemite National Park (Part IV Selection Criteria or "resource preservation criteria").

All the offers, except one considered as non-responsive, were determined satisfactory in regard to the principal factor of experience and related background. The results of the evaluation of financial ability and conformance to the terms and conditions of the prospectus were more varied. Several of the offers did not contain the required "compelling evidence" of the ability to provide \$12 million of initial equity capital and several were conditioned on substantive changes to the proposed concession contract for the benefit of the offeror, including shifting of environmental liabilities, contrary to the terms of the prospectus. Only one offer was determined to meet all the principal selection factors. This offer is clearly the best overall offer in the opinion of the Selection Panel for the reasons discussed below.

Selection Panel:

Chair, Mr. John H. Davis, Associate Director, Operations
 Mr. Stanley Albright, Regional Director, Western Region
 Mr. Michael Finley, Superintendent, Yosemite National Park
 Mr. Lee Davis, Chief, Concession Division
 Mr. Calvin Cooper, Acting Assistant Director, Denver Service Center

In addition, an evaluation panel assisted the Selection Panel in assessing the offers received.

Evaluation Panel:

Chair, Mr. Stephen Crabtree, Chief, Division of Concession Program Management, Western Region
 Mr. Klaus Christiansen, Staff Accountant, Concession Program

Management, Western Region

- Mr. Joe Pearson, Staff Accountant, Concession Management Division
- Mr. Bob Moody, Chief, Planning and Programs Branch, Concession Management Division
- Mr. Marty Nielson, Chief, Concession Division, Yosemite National Park
- Mr. Robert Yearout, Chief, Concession Planning and Analysis Division, Denver Service Center

Consultants:

- Mr. David M. Dornbusch, President, David M. Dornbusch & Company, Inc.
- Mr. Adam Block, Principal, Block and Associates
- Mr. R. Maurice Robinson, CRE, Principal, Real Estate and Hospitality Consulting, KPMG Peat Marwick

Counsel:

- Mr. Lars A. Hanslin, Senior Attorney,
Office of the Solicitor, Department of the Interior

SUMMARY EVALUATIONS.

The summary evaluations of offers set forth below should be read in conjunction with the attached technical evaluations of each offer. Each of the five Parts of the Phase II Selection Criteria are applied to the offers in the technical evaluations to establish a rating of satisfactory, marginal, or unsatisfactory for each criterion. The percentages and dollar amounts set forth below reflect NPS adjustments to the amounts proposed by each offer to accommodate the offer's varying assumptions and conditions. Four and fifteen year calculations of CIF contributions are included because of the four year franchise fee reconsideration periods set forth in the contract. Contributions after the first four years are subject to change. Accordingly, the level of contributions committed in the first four years is of greatest significance.

Amfac Resorts, Inc. (Amfac)

Amfac is a part of the JMB group of companies and is known to the NPS as an existing concessioner in several park areas. The Selection Panel considers that Amfac offer demonstrates satisfactory experience and background and responded satisfactorily

to the resource preservation and Equal Opportunity factors. Its financial capability is somewhat weaker than other that of other offerors but it does demonstrate that it is in a position to provide the required \$12 million initial equity capital. The company offered a CIF contribution of 1.9% in the first four years of the contract and 3.1% over 15 years (for a \$34.1 million total present value). This was the lowest CIF percentage of any of the offers.

In addition, Amfac's offer was conditioned on a release from the government and transference to the government (to the CIF) of certain pre-existing environmental and tort of YPCCO, including what is estimated to be, for comparison purposes, a \$12.5 million liability for environmental mitigation. Award of the contract on these conditions, even if otherwise acceptable to NPS as lawful and in the best interests of the government, would require resolicitation of the contract proposal as the conditions are material and substantively improve the proposed terms of the contract for the offeror. In addition, these conditions, if accepted, would impact the quality of service to the visitor as the CIF would be substantially reduced making less money available for improvement of concession facilities and services.

Amfac's offer is specifically rated unsatisfactory with respect to Criteria 16, and, marginal with respect to Criterion 6 as discussed further in the attached evaluation.

California National Resource Management, Inc. ("CNRM")

This offer does not contain significant required information causing the Selection Panel to consider it to be non-responsive to the prospectus although it was nonetheless evaluated for comparison purposes. It was found to be very different from the other offers received in that it essentially reverses the transaction proposed by the prospectus. Rather than the government receiving without condition a percentage of the gross receipts of the concessioner's operations in the form of a contribution to the contract's Capital Improvement Fund ("CIF") and the concessioner retaining as profits amounts in excess of this contribution and its expenses, CNRM proposes that it would receive 5% of the gross receipts of the business and place on the government the risk of operating and other expenses. Further, the offer effectively does not commit to purchase of the Yosemite Park and Curry Company ("YPCCO") as required by the prospectus and does not commit, as required, to contribute a specific percentage of gross receipts to the CIF.

CNRM's non-responsive offer specifically was rated (for comparison purposes) unsatisfactory with respect to all but three Selection Criteria as discussed further in the attached evaluation.

Delaware North Companies, Inc. (DNC)

DNC is a privately held, family-owned company headquartered in Buffalo, New York, which operates a number of food service concessions in the United States and abroad and has hotel operations through its Australian holdings. The Selection Panel considers that the company has satisfactory experience and background to conduct the Yosemite concession operations. The Selection Panel also considers that its offer is satisfactory with respect to Equal Opportunity and resource preservation factors. In addition, DNC is financially strong with a positive balance sheet evidencing its ability to provide the required \$12 million initial equity capital.

DNC proposes a contribution of 5.2% of annual gross receipts to the CIF (4.7% in certain limited circumstances). The 5.2% contribution has a \$56.5 million present value. The company places no conditions on acceptance of the stated terms of the prospectus and contract and budgets \$16.9 million (but imposes no cap on this or other liabilities) to cover environmental mitigation expenses (from its general resources or revenues, not from the CIF). In addition, DNC projects that it will make substantial capital investments over and above its CIF contributions.

DNC's offer is rated satisfactory with regard to all Selection Criteria as discussed further in the attached evaluation.

TW Recreational Services, Inc. (TWRS)

TWRS is also a company which is a current concessioner at several parks. The panel considered that its offer demonstrates satisfactory experience and background and the offer is satisfactory with respect to Equal Opportunity and resource preservation factors. It appears to have the financial ability to provide the \$12 million equity contribution although restrictions by current TWRS creditors on additional debt may need to be overcome. The company offers an effective CIF contribution of 5.3% for the first four years of the contract and 5.8% over the fifteen year term (\$63.5 million total present value). However, the offer proposes to transfer environmental mitigation obligations in excess of \$12.5 million to the government (referencing the CIF as the source of such excess funds) and states that upon the expiration or termination of the contract it would not be responsible for pre-existing liabilities of YPCCO. The offer specifically states in this regard that "NPS will cause any new concessioner to assume any and all pre-existing liabilities of YPCCO."

These limitations of liability could reduce substantially the offer's financial benefits to the government and be detrimental to visitor service because of the proposed additional burden on the CIF and subsequent operators. As with Amfac's offer, such conditions, which constitute material changes to the contract for the benefit of the offeror, could not be accepted, even if otherwise lawful and in the government's best interests, without

resolicitation of the proposal.

The offer was also unclear as to whether the company would accept the terms of the MCA financing without change, a requirement of the prospectus applicable in circumstances where the MCA financing is to be utilized.

TWRS's offer is specifically rated unsatisfactory with respect to Criterion 16 and marginal with respect to Criteria 6 and 15 as discussed further in the attached evaluation.

Yosemite Park Services, L.P (YPS)

YPS is a limited partnership with Randolph Read as General partner and with George Gillett, Executive Officer of Vail Associates, and others as a management team. It is not an ongoing business concern but the Selection Panel considers that the offer demonstrates satisfactory experience and related background. It is also considered that its offer is satisfactory with respect to Equal Opportunity and resource preservation factors. However, the company's financial capability is unsatisfactory as the individual whose permission is needed to commit to funding was not party to the offer, and, in any event, the offer does not contain required evidence to demonstrate that adequate funds are in fact available. The YPS offer also states that the commitment it makes to accept the terms and conditions of the contract is subject to the discretionary approval of an individual who is not party to the offer, thereby effectively making the offer conditional and non-binding contrary to the terms of the prospectus. Award of the contract to YPS would, in effect, give YPS an option on the contract. Such an award could prove detrimental to the quality of visitor service as there is no assurance that YPS would accept and implement the contract as presented in a timely manner, if at all. In any event, the contract could not be awarded to YPS on this option basis without resolicitation of the concession opportunity because of this material change to the terms of the solicitation for the benefit of the offeror.

The offer proposes a 5% CIF contribution (\$54.3 million present value). The Selection Panel was concerned, however, with the fact that the pro forma submitted with the offer does not include any budgeted amounts for environmental mitigation, estimated at \$12.5 million for comparison purposes.

YPS's offer specifically is rated unsatisfactory with respect to Criterion 15 and marginal with respect to Criterion 8 as discussed further in the attached evaluation.

YRT Services Corporation (YRTC)

YRTC is a newly formed company with an experienced board of directors and management team but is not an ongoing concern. The

Selection Panel considers that the offer demonstrates satisfactory experience and related background. The Selection Panel also considers that YRTC offer is satisfactory with respect to Equal Opportunity and resource preservation factors. However, YRTC did not present required evidence of an ability to fulfill the stated financial requirements. The offer states that YRTC has raised only \$7 million of the \$12 million minimum requirement for equity capital but intends to raise the balance by award of the contract. The \$7 million the offer states has been raised was accomplished by a private stock placement. The offer did not contain copies of purchase pledges for the \$7 million nor does it present any evidence to the effect that it has the ability to raise the balance of the \$12 million. The prospectus, in this regard, requires offerors to submit specific "compelling evidence" of an ability to obtain the necessary financing. The Selection Panel considers that YRTC does not meet the principal factor of financial capability.

YRTC proposes a CIF contribution of 2% for the first four years of the contract and 6.1% for the balance (\$65.7 million total present value). However, a substantial portion of this contribution is conditioned on a sharing of profits in later years of the contract, an eventuality which is not assured.

The offer also proposes to limit YRTC's environmental mitigation liability to \$12.3 million requiring indemnification from the government or MCA in this regard. The offer further assumes that implementation actions under the Concessions Services Plan or Housing Plan will be subject to negotiation with NPS, including the level of contribution to the CIF. This assumption is contrary to the terms of the prospectus and contract. Acceptance of this assumption by NPS would impact the ability of NPS to implement these plans as needed and could prove detrimental to visitor service as the effect could be to reduce contributions to the CIF and/or impede implementation of concession improvements. In any event, such assumption and limitation of liability could not be accepted, even if otherwise lawful and in the best interests of the government, without resolicitation of the concession opportunity because they constitute material changes to the terms of the solicitation for the benefit of the offeror.

YRTC is specifically rated unsatisfactory with respect to Criteria 15 and 16 as discussed further in the attached evaluation.

RECOMMENDATION.

The Selection Panel considers that the offer of Delaware North Companies, Inc. is the best overall offer as it is the one considered as most likely to achieve the objectives of the National Park Service for concession services and facilities in Yosemite National Park. The Selection Panel, accordingly, recommends that it be selected for award of the final contract. DNC clearly has the

experience and financial strength to effectively implement the contract, and, its offer conforms in all respects to the terms of the prospectus and accepts the liabilities of YPCCO, including environmental mitigation, without conditions. Further, the DNC offer proposes a sound Equal Opportunity program and demonstrates a solid understanding of and commitment to the resource preservation and interpretation goals of the National Park Service. Its proposal to contribute a specific percentage of its gross receipts to the CIF, although not the highest of all the offers, is generally comparable and, significantly, is unconditional (contrary to other offers received). It is also supported by pro formas which indicate an excellent understanding of the business risks and opportunities involved. DNC is the only offeror to be rated satisfactory on all Selection Criteria.

Because of the strength of the DNC offer and the substantial weaknesses of all other offers received with respect to principal selection factors as discussed above, the Selection Panel does not address in this summary evaluation or recommendation the relative differences between the offers with respect to all five Parts of the Phase II Selection Criteria. The attached technical evaluations do assess and rate each offer with respect to each Selection Criterion.

If you concur with this recommendation, please so indicate by signing under the concurrence line below.

Concurrence: _____

Herbert S. Cables, Jr.
Herbert S. Cables, Jr.
Deputy Director

Mr. MILLER. Thank you, Mr. Davis.

We have a series of questions, and I think what we will do is I will start off and, obviously, as we generally do, we will allow other members to ask questions.

For my purposes, we have broken this process down into three different areas: the overall policy of what is being engaged in here; the process; and the actual purchase. Let me, if I might, begin with the process.

You mentioned that the closing date for Phase II was November 16. Is that correct?

Mr. DAVIS. Yes, sir.

Mr. MILLER. My understanding also is that it is estimated that about 50,000 pages of material were turned in to you in response from the people who thought that they could make a bid. Is that correct?

Mr. DAVIS. There was a great deal of material. I don't know how many pages, but it was substantial.

Mr. MILLER. You said in your testimony this morning that you put together a 10-person evaluation committee on December 1. That's right?

Mr. DAVIS. Correct.

Mr. MILLER. And then the announcement was made on December 17.

Mr. DAVIS. That is correct.

Mr. MILLER. Can you walk us through what went on during the evaluation process between December 1 and December 17 on these bids?

Mr. DAVIS. Basically what took place was the evaluation panel met, as I pointed out, on December 1 and began the process of reviewing the responses of each of the concessioners to the 16 criteria called for in the statement of requirements. They worked on this for 9 or 10 days and prepared summaries of those evaluations and reviewed a great deal of detail concerning each company's offer.

This was prepared in written form, and this team, which was comprised of National Park Service professionals and three consultants from the outside, prepared their report that was then presented to the selection panel, which I chaired, and we met in San Francisco on December 10 to review the work of the evaluation panel, to review in summary the offers, as they were presented to us, and to make a recommendation therefrom of the best overall offer in our judgment.

We completed that work preliminarily on the morning of December 11, returned to Washington. The selection panel met again in Washington on December 16 and reaffirmed our decision and presented and reviewed our draft that was presented to the deputy director.

Mr. MILLER. Was there any determination in advance of what would be fatal to a bid and what wouldn't? If you failed on 1 criterion or 3 criteria of the 16 criteria that you mentioned, was different weight given to those?

Mr. DAVIS. Basically there were principal or primary factors. There were no drop-dead factors or if you fail, you're out type of thing. Every proposal was fully considered.

But the principal factors that we attached the most weight to were those associated with the business experience and expertise to be able to conduct an operation of this magnitude and size and a background that reflected that. All of the companies qualified in that arena.

The second principal feature was the financial capability of the company that was submitting a proposal and its ability to meet financially the requirements that we had stated.

Mr. MILLER. The question as to the qualification of whether they had the wherewithal to carry on the activities needed as a concessioner in Yosemite was determined how? Was that determined by their current activities engaged in, their previous activities? Did you visit their operations to make that determination?

Mr. DAVIS. No, we did not visit their operations to make that determination, but we confirmed the written record that they submitted with respect to that.

Mr. MILLER. What do you mean?

Mr. DAVIS. Well, they had to document in their response to our statement of requirements what their management expertise in this area was, and we confirmed the validity of that and made our decisions based on it. I would point out again that all of the offers were found satisfactory in that arena.

Mr. MILLER. Well, okay, did you confirm what they submitted to you as to the quality of their current or past endeavors to be able to judge the management quality we can expect in Yosemite?

Let me, if I might, just for background. Of the bidders, some had ongoing operations, as does Delaware North in a related field, and I guess in actual accommodations in Australia, I believe.

Mr. DAVIS. Yes, sir.

Mr. MILLER. One was the concessioner of the park. Others were made up of people who had experience in some facet of this industry and that entity was not currently running any business in this field. Is that correct? So, you had a range of people and experiences.

Mr. DAVIS. That is very correct. We had two offerors that were currently park concessioners, Delaware North, as you described, and then we had two organizations at least that were newly formed, but who had employed and had members on their board of directors who had experience in related activities, some within the National Park System itself from past employment. So, their qualifications were verified as being quite adequate to meet our needs.

Mr. MILLER. When you say their expertise, you're talking about what? Their business ability within this field to deliver these services?

Mr. DAVIS. Yes, sir, their experience in this kind of an operation in past activities.

Mr. MILLER. I guess what troubles me is that, given the nature of the contract, I am trying to determine whether we were basing this upon experience in the field, or is it expertise, or is it the high probability that they will be able to deliver what we expect of a concessioner in a park like Yosemite, and how did you determine that when you had these ranges.

You had a person that you have had ongoing experience with in terms of the current concessioners. You are able to look at their op-

eration where they now have concessions and extrapolate whether or not that is the kind of operation that is worthy of the Yosemite contract.

Mr. DAVIS. Correct.

Mr. MILLER. Then you had two people who personally had experience, but no ongoing operations of that particular entity. How did you make that extrapolation?

Then you had Delaware North that has a great deal of experience in handling the public in a number of related fields, but not exactly this field, and yet also has some foreign operations where they do do accommodations.

The threshold is whether they were satisfactory or unsatisfactory. That doesn't delineate a great deal.

Mr. DAVIS. We basically had three general ratings of the various offerors in the different elements, which were satisfactory, marginal, or unsatisfactory. Now, if all other efforts had been equal in other dimensions and we got down to a final decision based on the absolute expertise and background of a concessioner, we would have had to have pursued the question that you were asking me in more depth than, in fact, we did. But we were reasonably assured that each of the offerors was quite capable of carrying out the Yosemite operation.

Mr. MILLER. How did you arrive at the decision to judge the bids based upon satisfactory and unsatisfactory?

Mr. DAVIS. Basically if they met the requirements as stated in our statement of requirements, if they were responsive, they were found satisfactory. If there were perhaps some questions on minor elements of their response, we identified them as marginal. If they clearly were nonresponsive to one of the criterion that we had stated, in our judgment we found it unsuccessful.

Mr. MILLER. So, it is not exactly a hard-and-fast rating system here, and I don't know that it should be. We have been led to believe that for a while there was an ongoing discussion about whether to try to rank the bidders within each of the 16 criteria on a 1-5 or 1-10 scale, whatever it would be, but some ranking system and then compiling that. Apparently that was rejected, and the notion was to go with essentially one threshold. Either you were satisfactory or unsatisfactory. I am just wondering why that decision was picked.

Mr. DAVIS. Well, basically when we found that responses were clearly unsatisfactory in principal elements of our requirement, relative principally to financials and/or transfer of liability to the United States, we felt that we need not take that decision any further other than general evaluation of everyone's offer, which we did in each element.

Mr. MILLER. Is it your belief that that was clearly transmitted to each of the bidders?

Mr. DAVIS. Well, it was very clear that they had to meet the statement of requirements that we put in the offer that they were responding to.

Mr. MILLER. That in itself could be fatal.

Mr. DAVIS. Well, not necessarily fatal. If there had been a variety of unsuccessful elements, we may have had to go back into further

evaluation and negotiation. If all of them had been unsuccessful in elements, it would have changed our approach.

Mr. MILLER. Mr. Hansen.

Mr. HANSEN. Thank you, Mr. Chairman.

Mr. Davis, in light of the chairman's comments about this rating of satisfactory, marginal, or unsatisfactory, on page 5 you say only one offer, that of Delaware North Companies, was determined to meet all the principal selection factors. At issue in this lawsuit is the National Parks and Conservation Association. Under your rating of satisfactory, marginal, or unsatisfactory, where did you rate them?

Mr. DAVIS. Was it Yosemite Restoration Trust you're asking about?

Mr. HANSEN. National Parks and Conservation Association. No. Excuse me. Yes, the Restoration Trust. I'm sorry.

Mr. DAVIS. The Yosemite Restoration Trust was basically unsatisfactory in its response to the statement of requirements relative to financial capability, and they were unsatisfactory in response to a decision they made to cap and condition their commitment to the environmental mitigation measures.

Mr. HANSEN. So, the three criteria that the chairman has talked about and you talked about, you gave them the lowest rating. Is that right?

Mr. DAVIS. Yes, we did.

Mr. HANSEN. Mr. Davis, in the March 6 issue of the *Congressional Quarterly*, a spokesman from the National Parks and Conservation Association is quoted as saying the following about the National Park Service concessions management. "Reform is needed. The existing system is the most archaic, environmentally destructive, fiscally irresponsible taxpayer ripoff run by the Federal Government." The Federal Government is a pretty big outfit, but anyway, I was just curious what your reaction to this characterization of the National Park Service concession program would be.

Mr. DAVIS. I guess the attribution is the gentleman's position, and I feel that certainly in this effort that it was handled in a completely professional and, in my judgment, unless we learn otherwise in this process, very efficient manner.

Mr. HANSEN. I understand that Secretary Babbitt's choice for the assistant secretary with oversight of the National Park Service served on the board of the Yosemite Restoration Trust which sued the National Park Service for its selection of Delaware North.

Just out of curiosity, do you know how many other suits that The Wilderness Society has filed with the National Park Service in recent years? Do you have a running record of that anywhere?

Mr. DAVIS. I do not have a running record of it mentally. We may have it organizationally.

Mr. HANSEN. Say that again please.

Mr. DAVIS. I do not have a recall of that at the present time. We may have it organizationally, and if we do, I'll be happy to provide it for the record.

[The information follows:]

The Wilderness Society has filed two suits against the Secretary of the Department of the Interior in the previous ten years: a suit was filed against Donald P. Hodel April 28, 1988, and against Manuel Lujan November 12, 1993.

Mr. HANSEN. We recently went through a little flap last year about Members cashing checks when they did not have money to support them. As the ranking member of the Ethics Committee, half of the committee had to recuse themselves because they felt a little embarrassed getting involved in it.

Do you believe that, if confirmed, this assistant secretary should recuse himself from all future matters pertaining to Yosemite park management or just to those involving the concessioner?

Mr. DAVIS. I think that is a matter for his judgment to be structured by him and the Secretary in consultation with the Congress.

Mr. HANSEN. You should be the politician, not us. [Laughter.]

Mr. DAVIS. I have no choice at this moment.

Mr. HANSEN. Excellent answer.

Thank you, Mr. Chairman. That's all I have.

Mr. MILLER. Chairman Vento.

Mr. VENTO. Thank you, Mr. Chairman.

Mr. Davis, we appreciate the effort and work that the Park Service has put in. This is obviously sort of a maiden voyage. We are trying to get done a rather difficult and unique contract and policy. As I said, I am interested in both the specifics with regard to Yosemite and the precedent that is being set. So, we want to get it right.

I understand here, of course, we had an agreement that was executed by Secretary Lujan. In fact, he announced it after I had a hearing at one point. After the hearing, he announced that he was going to execute this particular agreement with MCA or Matsushita.

There was a purchase agreement, and that is one point. Then, of course, during the process you developed bid criteria and winnowed this down. Finally, after bids were made, you come to an actual formal contract agreement.

My question is, did the final contract agreement that was arrived at in any way modify the purchase agreement that was executed previously and/or did it in any way change the bid criteria?

Mr. DAVIS. In my judgment, the answer to both of those questions is negative.

Mr. VENTO. My understanding is that the draft contract provided to bidders assumed that the next concessioner would pay MCA in cash, rather than accept the financing terms of the purchase agreement. Is that correct?

Mr. DAVIS. I do not believe that it is totally correct. It is my understanding that we called for the successful bidder to assume a note at the beginning of the contract for the effective value of \$61.5 million and to repay that in cash on monthly payments over the 15-year term of the contract plus interest.

Mr. VENTO. Well, I am sure we are going to get a different perspective on this because, if the proposed contract is finalized, will that be the arrangement? It will not be a cash arrangement, in fact. It will not be a cash-out at the onset, but in fact, Delaware North plans to accept the financing terms, don't they, from MCA?

Mr. DAVIS. Yes, they agreed to accept the term that I just outlined.

Mr. Chairman, if I might add, Mr. Hanslin helped me on this a little bit. The offerors had an opportunity to either accept the fi-

financing package negotiated with MCA or to come up with their own financing at the beginning of the contract and pay it off as they chose to do so. However—and I think this is significant—all of the offers that we received elected to remain with the financing that had been negotiated with MCA.

Mr. VENTO. Was it necessary, therefore, to modify the draft contract to reflect these financial arrangements?

Mr. DAVIS. It was necessary only to articulate which final choice they would take and to put that into the contract language, yes.

Mr. VENTO. Well, under this arrangement on the MCA note, what is the status of the possessory interest? I guess really the benchmark here was to buy out the possessory interest, that that would basically come to this price of \$61.5 million with interest on September 30, 1993. This is really at the heart I think of this issue. What happens with the possessory interest? Was a value assigned to the possessory interest? What happens to it? Was a value attached to it?

Mr. DAVIS. The value is the value of the note.

Mr. VENTO. \$61.5 million.

Mr. DAVIS. Yes, sir. That is still held by the MCA Corporation, and Delaware North, or anyone that would have received this contract, will not have a possessory interest in the value. They will be responsible for paying it back under the terms of the contract.

Mr. VENTO. But this is part of the agreement. We are, obviously, in essence, saying that part of the payment will go to this. There is no special fund created for it I guess. They accept the note.

What would happen if the proposed contract were terminated before the end of the 15-year period?

Mr. DAVIS. If that were to happen, MCA reserves the right to select a new concessioner in Yosemite with approval of the National Park Service to meet the obligation of the contract.

Mr. VENTO. Well, this is an unusual precedent where MCA would be put in the driver's seat to make the first selection. Obviously, the Government would have veto authority, but we would really be out of the loop in terms of going to a bid process or opening this up. They would have the first option. Is that correct?

Mr. DAVIS. They would have the option to select a successor, and we would be very much involved in the approval of that selection.

Mr. VENTO. They have no such option today in terms of the initial contract with the note, do they?

Mr. DAVIS. They don't have it today relative to the note that they have agreed with us to take over. However, other concession operations within the National Park Service, if they change hands during the term of the contract, are handled in exactly the same way.

Mr. VENTO. Well, it is important we understand this, Mr. Davis, I think. I think we are trying to break precedent here.

What rights would MCA have in the event of that termination? They would have the right to do what you said. Pardon me. I won't ask that question.

What would be the status of the possessory interest then? The Park Service really has an equity in this. Some of this payment, in other words, at the end of the term would come to reside and be in the possession of the U.S. Government, the Park Service. What would happen at that particular point? Would the terms of

that contract then change? We have a kind of a big interest in terms of this process.

Mr. DAVIS. The United States would have the value of that interest that had been repaid by the concessioner, and MCA would still have the value of the unpaid balance on their note.

Mr. VENTO. The possessory interest would decrease over the 15-year period of the note. Is that correct?

Of course, this 15 years, in fact, was an arbitrary date, was it not? This date was actually arrived at in the bidding process in the bidding criteria. Is that correct or not? Or was it in the purchase agreement?

Mr. DAVIS. The 15-year term of the contract was determined by the National Park Service in looking at the financial potential of this operation and structuring it around a realistic opportunity to achieve the goals that we are setting out to do in protection of resources and providing better visitor services to the park.

Mr. VENTO. Well, just one more question on this possessory interest. The value of the possessory interest was really not something on which an appraisal was given and so forth, that we actually have documentation for. Is that correct, Mr. Davis?

Mr. DAVIS. There was a process followed. It was not a real estate appraisal.

Mr. VENTO. So, the possessory interest was really a negotiated settlement between the Park Service or the Department of the Interior and Matsushita. Is that correct?

Mr. DAVIS. Yes. It was a negotiated value of that based on facts. I was not personally involved in the actual sale.

Mr. VENTO. No, I understand. The Secretary was.

But the results of that, of course, weigh heavily in terms of what the terms and conditions are for this bid and for the contract. For instance, one of them dealt with the mandated requirement of acceptance of liability by the successful bidder to accept any type of cleanup liability, any of the other types of liability. There were two specific liabilities. One was for executive compensation contracts that were a liability with MCA, and the other was with this type of cleanup, toxic and other types of problems. Is that correct?

Mr. DAVIS. Yes, sir.

Mr. VENTO. Do we have any estimates on the value of those and what the impact is? If we are asking bidders to pick that up, I think it is important that we do have that.

Mr. DAVIS. The National Park Service did not represent a value of that cleanup. We left that to the analysis of the individual bidders in this process, and they individually did their own assessment. There is a very major unknown in that process.

Mr. VENTO. Yes, I understand that that was the case.

My concern, Mr. Chairman and members, is that I find it unusual that, for instance, for the toxic type of materials, other types of cleanup, that the Federal Government, especially the Department of the Interior, would be in the process of trying to shift around what would be superfund liability in the way that it has gone on here. But I just find it ironic that we get involved in shifting that around. I think there is a real legal question. If I were an attorney and something showed up here, whether it be asbestos or whatever the problems are, I think that I would have a pretty good

case notwithstanding the fact that the Park Service and others have come to this particular agreement. Many know more than I about that.

Mr. MILLER. Mr. Lehman.

Mr. LEHMAN. Thank you very much, Mr. Chairman.

First, briefly to follow up on this last line here, the Park Service and Matsushita came to an agreement, I understand, as to what the possessory interest was worth. Is that correct?

Mr. DAVIS. The National Park Foundation.

Mr. LEHMAN. The National Park Foundation did, okay.

That possessory interest is the security on the note that in this instance MCA or its successor here, Matsushita, is providing to Delaware North. Is that correct?

Mr. DAVIS. Yes, sir.

Mr. LEHMAN. As that is paid off, that interest diminishes over time.

Mr. DAVIS. Correct.

Mr. LEHMAN. Then on Mr. Vento's questioning here, if Delaware North could not meet the terms of that note, under the terms of this contract, in other words, defaulted on it, someone else would have to assume that note and take over the concession. At that point, Matsushita would have a say in that?

Mr. DAVIS. They would have a very significant say, but could not proceed without our approval in the transferring of that liability.

Mr. MILLER. Would the gentleman yield?

Mr. LEHMAN. Certainly.

Mr. MILLER. Could we buy them out if that happened in the twelfth, thirteenth, or fourteenth year of this contract? Can we extinguish their right by paying off the note?

Mr. DAVIS. Yes. That option would always exist, to pay off that note on the balance.

Mr. MILLER. At some point can you show us in the contract or the draft where that is the case because I didn't find that. This right of reentry of MCA is somewhat troublesome.

Mr. DAVIS. I would like Mr. Hanslin to answer your question, Mr. Chairman.

Mr. HANSLIN. The concession contract with Delaware North in its main body does not pick up all of those technicalities involved with the MCA transaction. Those technicalities are, of course, in the actual agreement with MCA, and to an extent, they will be included in a supplement to the concession contract, which is part of the package that is coming up to the Hill.

Mr. MILLER. That is within the purchase agreement of the MCA interest?

Mr. HANSLIN. Yes.

Mr. MILLER. So, that is not a final agreement. What the Foundation did is not final.

Mr. HANSLIN. No. That was the final agreement. The MCA transaction is a final agreement, but in our new concession contract, in its main body, it does not really refer to it because that is not pertinent to it. What we have tried to do is to keep all of the legal technicalities involved with the MCA transaction in a separate instrument, but that instrument will be coming up to the Congress along with the concession contract itself.

Mr. MILLER. Thank you.

Mr. LEHMAN. As I understand it, the note requires 180 equal payments over 10 years?

Mr. HANSLIN. It's 15 years.

Mr. LEHMAN. 15 years, rather.

Does that mean that the possessory interest decreases by one-one hundred eightieth or by a percent? What is it?

Mr. DAVIS. Yes. The possessory interest does reduce in equal payments per month. The interest payment will be reduced as it moves on. So, the value of the possessory interest is paid back in equal monthly installments for the full 15 years, and the interest payment declines.

Mr. LEHMAN. Were all the potential bidders aware of the fact that they would be able to finance the note?

Mr. DAVIS. In this manner, yes. That was stated as an opportunity.

Mr. LEHMAN. That was stated in what? In the prospectus you put out to them?

Mr. DAVIS. In the statement of requirements.

Mr. LEHMAN. Could you provide that for the committee?

Mr. DAVIS. Yes, sir, we can.

[Additional information follows:]

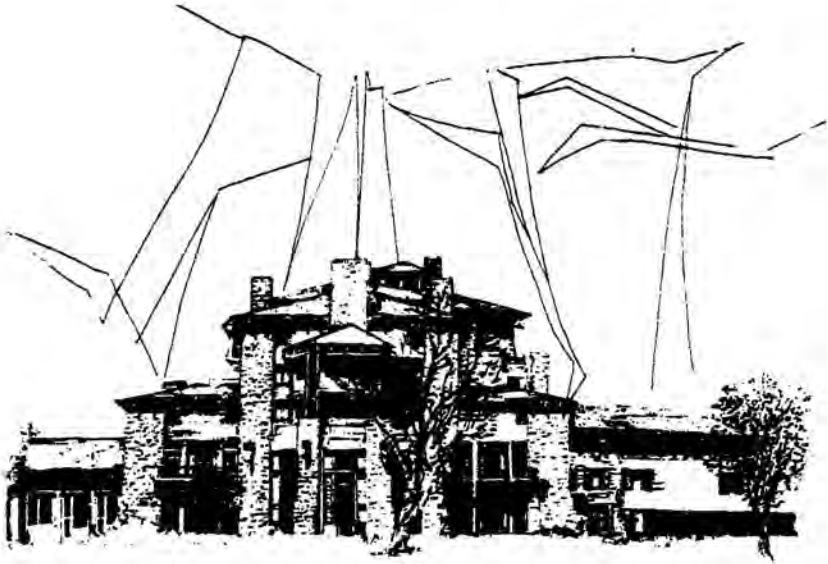
We have supplied two complete copies of the statement of requirements/prospectus; one was given to the counsel for the Committee and one to staff of the Subcommittee for National Parks, Forests, and Public Lands.

[Statement of requirements, prospectus, phase I, follows:]

PROSPECTUS

PHASE I

Yosemite Hotel Services



Ahwahnee Hotel
Constructed 1927
Yosemite National Park
California



U.S. GOVERNMENT PRINTING OFFICE: 1987-211-711

United States Department of the Interior

NATIONAL PARK SERVICE
Western Region
600 Harrison Street, Suite 600
San Francisco, California 94107-1372



April 4, 1992

Dear Prospective Concessioner:

You have expressed an interest in operating the principal concession services for visitors to Yosemite National Park. We begin the process of selecting our new concessioner with the distribution of initial information: and what we are calling a Prospectus - Phase I. Many have expressed interest. We are testing that interest in an initial application process. It is simple and inexpensive to complete. We hope, from Phase I, to have a list of those who would like to take a detailed look at our proposition and who are financially and managerially likely to be able to be competitive.

With the close in June of Phase I and the evaluation of the offers received, we will begin Phase II. We expect this to be in mid or late June. An extensive opportunity to review the operations in the park will be provided including tours of the facilities. Potential offerors will have four months to prepare Phase II applications. Our intention is to have the contract signed early in 1993 so that our new concessioner can prepare to begin operations smoothly in October of 1993.

Along with the Prospectus document we have provided five years of financial information covering the period just prior to the start of the events that are leading to the new concession contract. These statements reflect operations uninfluenced by the coming change of ownership. The statements are provided to show sales and trends in the business. They show a strong and improving business over time. We know that under the new concession contract the financial statements will be quite different. As part of the Phase II process we will ask offerors to prepare financial projections of the business as they would run it. Included with the financial information is some trend information we were asked by the existing concession management to include in the Phase I package. In particular this shows the seasonal trends in sales for this business. It includes some 1991 information as well.

The Concession Services Plan provided is a draft document. A revised draft is being prepared for release in June. While the details of the plan are not final, the draft does allow offerors to see the directions the National Park Service is taking that will affect this business. There will be extensive reorganizing of the facilities during the course of our new contract.

Thanks for taking a look at our initial offering. Please call with any questions. We are excited about the future of visitor services at Yosemite and feel that we are about to undertake a very positive period of improvement. We hope that you will agree with us and choose to be a competitor for this contract.

Mr. LEHMAN. Well, this says it shall be drafted on the premise that they will not be financing the acquisition in the SOR, and then later on it says in the event that the note is to be executed, the draft will be modified by the Park Service to conform to requirements of the note as expressed in the merger agreement related to the documents. I do not quite see how that is consistent with what you had said earlier.

Mr. DAVIS. Mr. Hanslin.

Mr. HANSLIN. I am not sure of the question, Congressman, but what we did in the Phase II SOR was include the concession contract that we would execute if the winner did not to take the MCA financing. Then that's what we put out because we were hopeful that we were going to get somebody who wouldn't take the MCA financing. But what we said was that if in fact the winner of the bid is going to have that financing, we would make appropriate changes to the contract to reflect the conditions of the financing, and those appropriate changes are under negotiation now. They are going to be incorporated into a supplement to the concession contract, which will be coming up here along with the regular concession contract.

Mr. LEHMAN. That is the proper answer to Mr. Vento's question then.

Maybe the chairman can help me here also. As a practical matter, where are we? The 60 days has not started yet because we have not formally received the document.

Mr. MILLER. That is correct.

Mr. LEHMAN. Then under the law, once we receive the document, if this committee could act in 60 days to—

Mr. MILLER. There is no requirement that we do anything. No. It simply lies before the Congress for 60 days.

Mr. LEHMAN. What would be the effect if, for some reason or other, this contract did not go through? What would happen?

Mr. DAVIS. We would be in the position of having to negotiate a continuation of concession services on September 29, 1993, with another operator. In all probability, we would attempt to negotiate a continuation of the operation with the Yosemite Park and Curry Company.

Mr. LEHMAN. Because of the time element involved?

Mr. DAVIS. Yes.

Mr. LEHMAN. So, practically speaking, the failure to enforce this contract and ratify it, finish it, would mean that the existing Yosemite Park and Curry Company would stay in command of the concession.

Mr. DAVIS. In all probability, if they agreed to do so. We would try to negotiate another contract, but the time element on this and the interest, it would be highly unlikely that we would be successful to readvertise and do it again.

Mr. LEHMAN. Now, as I understand it, the contract interfaces, of course, with the plans for Yosemite in the future and calls for 15 percent less occupancy in the park. Is that right, in terms of overnight accommodations?

Mr. DAVIS. Yes, sir.

Mr. LEHMAN. So, you have 15 percent less occupancy. You have what is roughly a 700-percent increase, from $\frac{3}{4}$ percent now to $4\frac{1}{2}$

to 5 percent in fees that will be generated for the park from sales by the concession. Correct?

Mr. DAVIS. Not in fees generated in the literal sense, but in return to the United States, there is a dramatic increase in the value coming back to the United States.

Mr. LEHMAN. Well, I just have to get to the assumptions here because this is the one thing that has always bothered me. How could you have less occupancy in the park—probably the most profitable thing the park company has is those overnight concessions—and increase the fees and still project out that Delaware North can be profitable. Are they going to have to increase fees for services in the park? Is that anticipated?

Mr. DAVIS. No, it is not any more than through the normal process, in which we change fees in national parks based on comparability for like services in the general area where companies are operating in a competitive market. So, there will not be fee increases to pay for this program. If there are any fee increases, it will be based on inflationary comparability of private business that their prices are compared to.

Mr. LEHMAN. But won't there, right off the top, be less money flowing to Delaware North if you are going to cut down the occupancy in the park?

Mr. DAVIS. There would probably be some less—

Mr. LEHMAN. Well, you have 15 percent fewer overnight accommodations. That is 15 percent of that segment anyway.

Mr. DAVIS. Yes, but that will be staged as well over the life of the contract. The 15 percent reduction will not occur immediately.

Mr. LEHMAN. How much will occur each year?

Mr. DAVIS. Perhaps Mr. Finley can best address that detail.

Mr. FINLEY. Congressman, we did not do a specific schedule about which accommodations would be reduced immediately or year one or year two, as an example, but we are mindful that we have a goal to reduce overall accommodations park-wide by 15 percent and in Yosemite Valley by 20.2 percent. We will look at and stage some of those based on our resource management plans.

For example, some of the first to go would be those units adjacent to the Merced River where, for resource management purposes, we want to restore the Merced River. We would take out appropriate units to do the restoration mindful of the ability of the company to pay back and make a return on their investment, but never backing off from our goal to reduce accommodations.

Mr. LEHMAN. The 15 percent in overnight accommodations reduction, that is a number you have put out here. Is that part of the contractual agreement?

Mr. FINLEY. No. Congressman, that was a part of the concessions services plan. If you will remember, the original GMP, general management plan, for Yosemite called for a 17-percent reduction in overnight accommodations in Yosemite Valley. Through the concessions services plan process, we determined that it was more appropriate to take more accommodations out. So, we went from 17 percent in the valley to 20 percent. Park-wide we also made the assessment that we could reduce accommodations in Yosemite further and benefit the resource. So, park-wide where the old GMP called for a 13-percent reduction in accommodations, the conces-

sions services plan was amended and adopted a 15-percent overall reduction.

Mr. DAVIS. I think it is important to note that the concessions services plan that Mr. Finley just spoke of was a part of the information provided to the prospective bidders in the statement of requirements process.

Mr. LEHMAN. Is the proposal to upgrade some of the overnight accommodations in the park also part of that?

Mr. DAVIS. Yes.

Mr. LEHMAN. As I understand it, the proposed contract provides for a concession fee of 0 percent of gross receipts. Is that correct?

Mr. DAVIS. Basically there is 0 franchise fee certainly during the first 4 years of the contract. At the end of 4 years, the opportunity to renegotiate the financial return to the Government will exist and will take place dependent on the financial history of the operation at that point.

Mr. LEHMAN. So, you will automatically revisit that in 4 years?

Mr. DAVIS. Yes, sir.

Mr. LEHMAN. Does the proposed contract treat the contractor's required payments to the government improvements account and the capital improvements fund as, in effect, the equivalent of a concessioner franchise fee?

Mr. DAVIS. We look at it as a return to the Government.

Mr. LEHMAN. What's your answer? [Laughter.]

Mr. DAVIS. Pardon me. We do not look at it as a fee per se, but we look at it as a return of value to the United States.

Mr. LEHMAN. And what is the authority you have to do this?

Mr. DAVIS. I misunderstood if you asked me what authority I had to do this. I would be pleased to have that question.

Mr. LEHMAN. Go ahead. That's the next question.

Mr. DAVIS. Mr. Hanslin will better handle that.

Mr. HANSLIN. Both the so-called accounts—and I'll call it the CIF, the capital improvement fund—are really no more than an accounting mechanism whereby the investment that the concessioner is supposed to make in the new facilities gets put aside in an escrow account and then gets spent as the Park Service decides what needs to be done.

Under the old system of contracts, what you do is, say, in the contract, for example, that the concessioner was to invest \$10 million in the facilities with no further ado, so to speak, and then during the term of that contract, the concessioner with his money would invest the \$10 million. What we have done through the capital improvement fund is instead of saying invest \$10 million, we say put X percent of your gross receipts in a specific fund which will be used to fulfill that \$10 million obligation and will be spent as directed. It is really an accounting mechanism. It does not change the system as we have always done it.

Mr. LEHMAN. Are you using that accounting mechanism in other contracts?

Mr. HANSLIN. Yes. They have been in place since roughly 1982. There are at least ten of them in place now.

Mr. LEHMAN. Thank you. I will have some other questions later.

Mr. MILLER. You inserted 0 percent, and then you go on to talk about how under the terms and conditions in which 0 percent is

owed. There is no requirement in the law for a minimum there beyond 0?

Mr. DAVIS. For a franchise fee? No.

Mr. HANSLIN. No.

Mr. MILLER. There is no minimum required in the law?

Mr. HANSLIN. No.

Mr. MILLER. Thank you.

Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Chairman.

It is kind of hard to track here whether we are talking about the contract or the procedure or the policy. Where is the contract from your standpoint procedurally?

Mr. DAVIS. Procedurally it is in the hands of the National Park Service at this point, and we are awaiting the judge's decision, which we expect at any time relative to the lawsuit involved, at which time we will transmit it to the Secretary of the Interior for his review and subsequently send it to you folks in Congress.

Mr. THOMAS. I see.

Apparently in transmitting it from the regional director to the Park Service Director, there was some concern about any actions that would impact or impede the litigation that is pending. Are you concerned about that?

Mr. DAVIS. No, sir. If I understood your question, the document had already been transmitted from the region to the Washington office when litigation was initiated.

Mr. THOMAS. When do you expect the court's decision, or do you know?

Mr. DAVIS. I would let Mr. Hanslin answer that.

Mr. HANSLIN. The judge does what she wants, but they indicated that she wanted to rule by the end of this month. She was, of course, surprised by the 60-day waiting period up here and all that kind of stuff and the fact that we have to move forward on this. So, I am optimistic we will have the opinion in the near future.

Mr. THOMAS. Is it possible for you to talk about the percentage of gross that these concessioners pay under this contract compared to the previous one, for whatever the purpose, whether it is back into the facility, whether it's these other things? Is there a comparative percentage of gross revenue?

Mr. DAVIS. Yes. We can talk generally in terms of return to the Government. Under the old contract, a franchise fee, which was submitted directly to the Treasury of the United States in the amount of $\frac{3}{4}$ percent, was the condition of that contract.

Mr. THOMAS. But the concessioner also had to put a certain amount of money back into facilities, did he not?

Mr. DAVIS. The concessioner had, of course, to maintain those facilities that he owned the possessory interest in.

Mr. THOMAS. I see.

Mr. DAVIS. There was an early requirement, the details of which skip my mind, relative to an investment program that was required early on in that contract, the obligations of which have been met.

Now, with the proposal from the Delaware North people, under the new contract, we are looking at a general return of value to the United States that we have calculated of 20.2 percent. However—

Mr. THOMAS. Of gross receipts.

Mr. DAVIS. Of gross receipts, pardon me.

However, there is none of that that is coming into the Treasury in the form of a franchise fee.

Mr. THOMAS. I understand.

What elements here of this contract would represent a new policy direction that might be applied throughout the system?

Mr. DAVIS. Well, there are a number of them. There is a shorter term in the contract that is reflective of new policy direction. There is no preference to additional services, beyond those provided in this contract for future operations, say, transportation. There is a different, new conditional right of preference to continuation of this contract upon its expiration in 15 years, and there is a general process, although it is different than the one in the standard contract language, of acquiring the concessioner's possessory interest.

Mr. THOMAS. So, would you say you are making substantial progress toward a different policy for concessions generally?

Mr. DAVIS. The general policy already exists in the newly enunciated standard contract language and new rules and regulations governing operations of concession. This is consistent with that.

The Yosemite contract that we are looking at incorporates consistency in the areas that I just articulated, but it is distinctly different in some other aspects and cannot be looked at as a cookie-cutter mold that will absolutely guide in every way future concession contracts. So, there are differences that are going to be unusual in each concession operation that need to be structured within the general framework of the new rules and regulations and standard contract language.

Mr. THOMAS. Mr. Finley, you indicated a reduction in overnight facilities. Where has the growth in demand occurred? Has it been for back-country daily visits, or has it been for overnight facilities in the park?

Mr. FINLEY. Over the last, let's say, since the early 1980s—you asked specifically for back country—our back-country use today is less than it was in 1975; 94.5 percent of Yosemite is wilderness.

The greatest demand is in the front country. It is along our road corridors. It is in the developed areas, and there is tremendous demand for lodging facilities.

Mr. THOMAS. So, in light of that, you reduced the facilities.

Mr. FINLEY. Yes, we did. It was a very tough decision, but the goals of the general management plan were to reclaim priceless beauty, restore natural processes, reduce congestion, and reduce crowding. We believe that those are important goals today, as they were in the past. It was very tough on us to look at the American public and say we understand your desire to stay in Yosemite. We understand you love the park, but nevertheless, as responsible stewards, we think it is important to reduce at least by this amount.

Mr. THOMAS. Well, I understand the difficulty. It does seem strange if 95 percent of it is wilderness, that we don't understand that the remaining is not wilderness and, indeed, is for pleasure.

Thank you, Mr. Chairman.

Mr. MILLER. Thank you.

Mr. Allard.

Mr. ALLARD. Thank you, Mr. Chairman.

I hope I do not repeat anything that has been asked already, but I do have some questions in regard to the three major businesses that applied for the concession contracts. How are they organized? Are they organized as corporations, sole proprietorships, partnerships?

Mr. DAVIS. Basically they are all corporations.

Mr. ALLARD. Are they nonprofit or profit?

Mr. DAVIS. Pardon?

Mr. ALLARD. Are they nonprofit or profit?

Mr. DAVIS. They are all profit.

Mr. ALLARD. They are all for profit.

Mr. DAVIS. Yes.

Mr. ALLARD. So, we don't have to worry about a nonprofit in that group that would have applied where they maybe got exempted from certain taxes because of the way they are organized.

Mr. DAVIS. Not to my knowledge, no, sir.

Mr. ALLARD. That is the only thought that I had, and I wanted to pursue that.

Thank you, Mr. Chairman.

Mr. MILLER. Thank you.

Mr. Davis, let me ask you a question with respect to the issue of the liability cap. What toxic cleanup may have to occur?

Mr. DAVIS. Yes. The principal concern in this regard is underground fuel storage tanks. There are some other issues relative to asbestos in some places and what have you, but the main concern is underground storage.

Mr. MILLER. It is my understanding that one of the things that you wanted in this statement of requirements was the acceptance of unlimited liability. Is that correct?

Mr. DAVIS. We asked the concessioner to—

Mr. MILLER. Bidders.

Mr. DAVIS [continuing]. The bidders to assume the liability that MCA had relative to environmental mitigation and that it not be transferred to the United States.

Mr. MILLER. Your assumption there is that MCA currently has unlimited liability for the cleanup of those facilities?

Mr. DAVIS. They are, in fact, in an ongoing program and have been for the last 3 years or so working on the cleanup of some of them, but they are not going to be complete.

Mr. MILLER. What is the liability in your mind? Why did you ask potential bidders to accept unlimited liability?

Mr. DAVIS. We asked them to accept the same liability that the current operator had and not to transfer that cost to the United States.

Mr. MILLER. What is your understanding of what that liability is?

Mr. DAVIS. We are very uncertain as to what the total liability is, although we have seen reports that indicate that it is probably in the vicinity of, I would say, \$10 million to \$16 million, \$17 million.

Mr. MILLER. How do you determine that?

Mr. DAVIS. That basically is just a best-judgment estimate. Mr. Hanslin just advised me that two of the offerors had reports in which they represented professional analyses that they had done.

Mr. MILLER. How long have you known about this problem?

Mr. DAVIS. I am not real certain. It represents a concern—

Mr. MILLER. Mr. Finley, do you know how long the park has known about the problem with the underground storage tanks?

Mr. FINLEY. The park began the program prior to my arrival based on the underground storage tank regulations in making an assessment both with the concessioner and for the Government fuel delivery systems. Well, we can change this for the record, Mr. Chairman, but I think there were over 34 original tanks for the Curry Company. Many of the tanks were removed and there was no remediation required. There are other sites that require remediation, and those will be ongoing into the future. So, the Government has known about it at least since I arrived at the park.

Mr. MILLER. It appears that the issue of liability became crucial in the consideration of the suitability of the bidders, and I am trying to determine what we knew about that liability. We have had an ongoing program with the current concessioner. The current concessioner I assume has a plan in place for the removal of these problem sites and the remediation of those sites. Yet, you are telling us that this was just left to the bidders and their assumptions, but what you wanted was unlimited liability. I am trying to determine whether it was real or not. What do we know about this liability? We are demanding work of MCA, are we not?

Mr. DAVIS. Yes, we are and we are not knowing what the final liability will be until the tanks are dug up and it is found out how much they have leaked, if they have, and where the contaminated soils may be and how deep they are, et cetera.

Mr. MILLER. The Park Service has never affixed a value on that? You have ongoing negotiations with MCA to spend the money, do you not?

Mr. DAVIS. We do have an ongoing program to correct that as they move—

Mr. MILLER. Has MCA ever told you what they thought it was going to cost them?

Mr. FINLEY. No, but as a part of this transfer, this stock sale, the new entity will assume all of the liabilities of the existing—

Mr. MILLER. Well, I understand that. No. I am trying to determine what it is—

Mr. VENTO. Will the gentleman yield?

I think the point that we are wondering about is that you knew something about this. The bid process is sort of this cold, sliced "will you accept the liability?" My question is, Was there any other information that was transmitted based at least on what the Park Service knew with regard to any type of diligence concerning this matter. Was everyone just sort of on their own?

Mr. HANSLIN. No, Mr. Congressman. You have to keep in mind what is happening here is that a new private corporation is purchasing 100 percent of the stock of an existing private corporation. If you buy 100 percent of the stock of a corporation, you are buying their assets and liabilities, and it is the obligation of the company making that acquisition to do, as they call it in the trade, due dili-

gence to ascertain that what they are buying and for the price they are getting it is proper.

We did not, I think, see it proper for the Government to certify to these private companies what those values were or what these liabilities were. We thought that was for the companies to do.

The National Park Foundation, before we signed the final transaction, did a very, very thorough due diligence of the company. They went out there with accountants and lawyers and environmental engineers and all kinds of people and interviewed, looked over the records, thoroughly investigated it.

Then when we put out the bids, each company that was applying was put under the very affirmative obligation in the SOR to go out and make their own judgment as to what those liabilities should be and to cater their bid accordingly. Two of the six bids submitted very thorough environmental reports on the environmental liability. Both reports roughly came in at about an \$8 million liability, and that is how they structured their bids.

Mr. MILLER. The determination of that question goes back to what the return to the taxpayer is going to be. One company has said they thought the liability is around \$16 million, I think Delaware North. Somebody else said they thought it was between \$7 million and \$12 million, and somebody else said they thought it was \$12 million. And you wanted unlimited liability.

The question is, What is the premium that we have paid as taxpayers to secure that unlimited liability if, in fact, it could be quantified, because the difference is that in one case the net value of the bid may be worth \$65 million to the Government. In the case of Delaware North I think it is worth \$56 million. Are we paying that premium of \$9 million or \$10 million because we wanted unlimited liability when we had an opportunity to quantify it?

Mr. HANSLIN. I don't think there is any premium involved.

Mr. MILLER. But you apparently can't tell me that because you said, on the notion that what you wanted was unlimited liability, that people went out and assessed it and said they thought the liability apparently was in the range of around \$12 million to \$15 million. You apparently do not have the ability to say whether or not that is reasonable. So, then they adjusted their contribution to the CIF based upon what they anticipated their liability to be, and that determines the return that we are going to get. If it turns out that Delaware North can do it for \$7 million, that changes the amount of return that we are going to get.

I am not telling you that you have to tell me exactly what the liability is, but did you make the effort to quantify it so you would be an informed negotiator sitting at the table?

Mr. HANSLIN. Well, I have two answers to that.

Mr. MILLER. Give me either one of them.

Mr. HANSLIN. Well, in terms of a so-called premium, in fact the CIF contribution from the offerors, on the high ones, and Delaware North were roughly the same. I do not think you can identify a premium based on the environmental liabilities, in fact.

Second, what we did was rely on the expertise of these companies and the Park Foundation to look at that. When they came in with their reports and every single company had their own esti-

mate and budget for the environmental liability, we made a judgment on the basis of that.

Mr. MILLER. I will look for it and let somebody else ask questions, but I think, in fact, it does go to the net present value of the contract when you look at those evaluations. You have been engaged in this process now for a series of years, and I think there is a question as to how you affix the liability. I appreciate what you wanted. You wanted the person to stand in the shoes of MCA. The question is, What was that really worth?

Mr. LEHMAN. Mr. Chairman?

Mr. MILLER. Yes?

Mr. LEHMAN. Just to clarify, what you are saying is that the determination of what the liability comes to is a very important factor in determining what the return is. Correct?

Mr. MILLER. Excuse me. I'm sorry.

Mr. LEHMAN. Quantifying the liability would be very important in determining what this franchise is worth if you were buying it.

Mr. MILLER. I think it does. I think it does. I am not sure it is a satisfactory answer to suggest that that is to be left to the bidders.

As I look at the summary of the bids, the suggestion is that Yosemite Restoration Trust net present value is about \$65 million, and Delaware North is about \$56 million. Now, that may be inaccurate, but I still think there is an underlying question here as to whether or not you diminish the value of the bids when you demanded unlimited liability. There may be a very sound reason, as we have all experienced toxics through the 1970s and the 1980s. But when you demand that, do you diminish the value of the bid and the return to the Federal Government if, in fact, the liability could be quantified? Some people looked at it and said check you later. We're not interested in toxics. Right?

Mr. DAVIS. That is correct.

Mr. MILLER. So, they decided the bid wasn't worth bidding on.

Mr. DAVIS. That is correct.

I would point out also, however, that if at the end of 4 years when we return to the table to look at the financial history of the operation, if we find that the environmental cleanup, by example, is completed, and that not nearly this amount of money was needed to correct it, then we will be in negotiations to bring back more of the return to the United States for other purposes. So, there is the 4-year element of revisiting the financial history of this contract.

Mr. MILLER. Did the question of unlimited liability figure in the acceptable capital requirements for the companies? If George Miller accepted unlimited liability, you would not be getting much in terms of protection for the Government. If Delaware North did, did you believe that they had the capital requirements to accept unlimited liability, or did it make any difference?

Mr. DAVIS. That is part of the reason that we required a \$12 million equity—

Mr. MILLER. But that doesn't answer the question as to unlimited liability. Are you quantifying it now at \$12 million?

Mr. DAVIS. No. I am not quantifying it or—

Mr. MILLER. I'm sorry. I missed the answer.

The question is this: If unlimited liability was as important to you as it is suggested in the contract—and again, it may be a very sound premise—then the question would be, when you are asking a party and a party agrees to accept unlimited liability, what is their wherewithal to deliver on that contractual arrangement? If they do not have the financial wherewithal to deliver that, one of the other bidders that puts a cap on it may be delivering you a better contract if they can deliver the cap. I am not saying that is the case. I am just asking the question. I suspect we will have other concession contracts that deal with toxics.

Mr. DAVIS. Correct. Again, that is why we required a sound financial ability on the part of the bidders on this concession contract, and that is why we fixed that financial availability on the part of the offeror at \$12 million because there was anticipation of a requirement of a cash outlay.

We also recognized that during the process of the concession operation, that this operator will be making money, as indicated in the pro forma, that will provide additional funding to meet those obligations.

Mr. MILLER. Are you telling me that you linked the \$12 million capital requirement to the unlimited liability?

Mr. DAVIS. We linked the \$12 million capital requirement to a number of things, mainly saying we wanted a financially healthy organization to step in and take over this contract. It wasn't a direct link, but it was an element of our consideration of requiring an organization to have the money to meet these and other anticipated needs.

Mr. MILLER. Well, I will have to think about it, but I am not sure that \$12 million would provide me that security in this, looking at the entirety of the contract.

I am going to yield my time here, but we have not gotten to the question of what they inherit in terms of working capital. That \$12 million starts to get diminished rather quickly, especially if you are now trying to suggest you wanted financial security as to their ability to deliver on the unlimited liability.

Mr. Calvert.

Mr. CALVERT. Thank you, Mr. Chairman.

I just had one question in regard to MCA's note. If MCA down the road, if in fact your contract is finalized, decides to sell its interest, does the U.S. Government have the right of first refusal to acquire that note?

Mr. DAVIS. Well, I guess we can have the note paid off at any time. Right. Are you talking about MCA selling it to someone else?

Mr. CALVERT. To a third party.

Mr. HANSLIN. At any time when this contract is signed, if either the Government or another concessioner comes up with the cash to pay out MCA, they are out.

Mr. CALVERT. What I am asking, though, hypothetically if MCA decides to sell its note to a third party for a discount or for a price, does the United States Government have the right to take that position and acquire that note?

Mr. HANSLIN. Well, yes.

Mr. CALVERT. That is the question I had. Thank you.

Mr. MILLER. Mr. Vento.

Mr. VENTO. And/or syndicate it. Well, that's what they do. When they need to raise cash, that is what is probably going to happen with this. But they would have to execute the conditions of the purchase agreement I guess, which is the driving force, and so we hope that it is good.

On this issue that the chairman was exploring with you concerning the liability, Mr. Davis, can you explain the relationship between the costs of cleanup and the capital improvement fund and the government improvement fund? What would happen? Wouldn't those particular funds also have a subtraction from what would be put into them based on the nature of the liability or the cost of the cleanup that we are talking about here? Or are they inviolate?

Mr. DAVIS. They are basically proposed as separate entities in this process. The commitment to the capital improvement account in the response from the Delaware North Companies is unconditional, and they do not tie that at all to their obligation to meet the environmental cleanup.

Mr. VENTO. How about the government improvement fund? Is the condition there unconditional?

Mr. DAVIS. That is basically the same thing, yes, sir.

Mr. VENTO. What is the percentage of payment in the government improvement fund?

Mr. DAVIS. It is a very small percentage. I do not have the exact calculation, but it is \$212,000 annually out of a \$20 million return to the United States.

Mr. VENTO. It is very small.

The failure of the concessioner to pay into either fund would be a material breach of the contract. Is that correct?

Mr. DAVIS. It could be that, yes, sir.

Mr. VENTO. Well, I mean, I am asking you. Is it or isn't it? Are they inviolate? I am just trying to understand.

They have to make the purchase payment to buy back possessory interest which will reside in the National Government. We have the capital improvement fund, which basically is for the benefit of enhancing the concession operation, with the approval of the park superintendent I guess, and maybe the regional director. Then you have the government improvement fund, which you have now said is very, very small, \$212,000 a year. So, those will be the set figures, plus you have the unlimited liability pickup here which somehow you have valued at—well, you haven't put a value on it.

When I listened to Mr. Hanslin talk about this, he acted as if the National Government wasn't involved, but we are very much involved because we are saying the contingent liabilities would be picked up by the purchaser. So, we are very much involved in executing the terms of that purchase agreement and in requiring bidders to pick up that particular liability. So, we are very much involved as a player at the table with this issue.

If there is failure to do that, we could very well end up with an entity that would be in bankruptcy and not able to respond to the cleanup problems in Yosemite. Of course, you have \$12 million, but you have to have working capital out of that figure.

Incidentally, two years ago when Secretary Lujan was here, he said there would be no need for working capital, but it is very evi-

dent that there is a need for working capital now. Is that correct, Mr. Davis?

Mr. DAVIS. There is a need for working capital, yes.

Mr. VENTO. One of the concerns that is growing out of this really relates to a question with regard to the authority of the Park Service to enter into the concession contracts and provide for a 0 percent payment of a franchise fee and payments to special funds instead to the Treasury. You did not answer Mr. Lehman's question which was, Under what authority of law do you interpret these arrangements to be consistent or authorized? You referred to 10 other contracts or so since 1982. You said you were doing it before. So, therefore, it must be all right to do now. But when I ask a solicitor that question, I expect a little different response.

Mr. HANSLIN. Well, I didn't understand his question to be—

Mr. VENTO. Well, do you understand my question?

Mr. HANSLIN. Yes, I do, Mr. Chairman.

There are several different legal issues you have raised there. All of the authority, though, for what we are doing is contained in the Concessions Policy Act vis-a-vis the—

Mr. VENTO. Well, I would like you to specifically cite that particular section of the Concessions Contract Act which gives you the authority to have a 0 percent franchise fee and to set up special funds outside the control of the authorizing or appropriation function of the Congress and outside the Treasury. The Treasury has no role here.

Mr. HANSLIN. Can I take those one at a time? It would be easier.

Mr. VENTO. I would like a general explanation, and I would give you an opportunity to specify in writing the specifics of it.

Mr. HANSLIN. Okay. In the Concessions Policy Act, the Congress specifically exempted the National Park Service from the requirements of, I think it is, 40 U.S.C., section 303[b], which law says that when a government agency leases property to a private party, that the government agency is supposed to get cash rent only and put it in the Treasury. That is what the law says, and that would be applicable to these contracts.

The Congress, in the Concessions Policy Act, specifically exempted the Park Service from that, which allows us—and this is, of course, what the Congress intended, and it is in the legislative history—to lease land or make land and buildings available to concessioners and instead of taking cash rent, we can require the concessioner to take care of those properties and improve them and make investments in them. That is the fundamental authority under which we are operating.

Mr. VENTO. But I think the thing is that that is a barter. I understand that or read that to be a barter exchange, but you are taking cash in this particular instance, are you not? In fact, you are setting up—

Mr. HANSLIN. No. Well, that is the next part of the question. As I explained to Mr. Lehman, under the Concessions Policy Act for years and years, what would happen is the Park Service would enter into a contract with a concessioner which would say in general terms that you have the obligation to provide these services and invest a certain amount of money in buildings on park land, the park-owned improvements. In consideration of that under that

law, we give them possessory interest, and the United States of America undertakes to compensate them for that possessory interest in certain circumstances when they cease to be there.

Now, the old system was, we would say as a hypothetical, here is a 10-year contract. We want you to invest \$10 million in park buildings. That would be the deal. Obviously, that \$10 million investment that they have to make would have an impact on other financial aspects of the contract, but it was a \$10 million commitment with no boundaries set. It did not necessarily say when they had to build or anything like that.

What we have done through these accounts is simply taken that \$10 million amorphous commitment, if you will, and tell them to fund that \$10 million through a set-aside from their own revenues so that the money is in an account. We know where it is, and we can direct it to the improvements. That is what has been achieved there, and I think that is fully authorized by the law.

Mr. VENTO. Well, I think there is an open question on that and probably one that should be resolved in terms of these accounts. These accounts are controlled by the concessioner, or are they controlled by the Government and the concessioner?

Mr. HANSLIN. They are concessioner bank accounts. However, the concessioner can only make expenditures from the with the approval of the Park Service for the facilities.

Mr. VENTO. You have to have the co-signature of the regional director?

Mr. HANSLIN. It is not on the account per se, but I think they cannot make the expenditures without the approval of the Park Service.

Mr. VENTO. Well, in fact, it isn't the Park Service at all. What is the approval process for the expenditure of funds from the government improvement or capital improvement accounts? Of course, you are telling me that only the concessioner is going to control the government improvement accounts as well?

Mr. HANSLIN. Well, the expenditures are subject to Park Service approval.

Mr. VENTO. Well, I read and understand that the National Park Service standard concession contract language provides that projects over \$1 million will have to have the written approval of the National Park Service director.

Mr. HANSLIN. That is correct.

Mr. VENTO. Will the proposed contract contain the requirement?

Mr. HANSLIN. The section you are reading is for a large contract. Every expenditure from these accounts gets Park Service approval. The question is at what level of approval—

Mr. VENTO. What level, that's right. Most of it I suppose for small ones will be the superintendent, and if it is over \$1 million, it is going to have to be the National Park Service director.

Will the proposed contract contain the requirement?

Mr. HANSLIN. What requirement?

Mr. VENTO. That requirement for over \$1 million.

Mr. HANSLIN. I believe it is in there, Mr. Chairman. I would have to check.

Mr. VENTO. Well, my reading is that it is not in the draft contract that we received, although it was in the standard concession contract. My question is what happened to it.

Mr. HANSLIN. It may be that it is in one of the exhibits to the contract that perhaps you didn't look at, but we would have to look for that.

Mr. VENTO. Well, that is right. It does not say that. I have not got time to read it, obviously.

Mr. HANSLIN. We will clarify it for the record, Mr. Chairman.

[The information follows:]

The contract requires that any expenditure from the capital improvement fund or the government improvement account have National Park Service approval. Exhibit G to the contract sets out detailed procedures for proposing, approving and managing projects. It requires regional director review of each nomination and the resulting priority list. It does not require approval by the Director, because this contract was prepared in July 1992, prior to the September 1992 development of the new standard contract language.

Mr. VENTO. Well, it is not in the draft contract is what I am telling you.

Mr. HANSLIN. And you have all the exhibits to the draft contract?

Mr. VENTO. We do have them, and I am just suggesting that you are not able to specifically point to where it is in the exhibit, and only that line has been dropped from the standard concessions contract. So, I suspect that there has been a change in what is required here. So, it is a reasonable assumption without going back to look at other exhibits, unless you can specifically point that out to me at this time.

Mr. HANSLIN. I don't have the contract in front of me, Mr. Chairman.

Mr. VENTO. We will correct it if it is incorrect, but I assume it has been left out. Mr. Davis, Mr. Finley, are you able to respond to this? Has it been dropped out?

Mr. DAVIS. It has not been dropped out for any reason that I am aware of, and I would appreciate the opportunity to clarify the record on that.

Mr. VENTO. Yes. I want you to do that. I think it is important because this contract and this process is one that, as you know, I have been highly concerned about in the past for not recognizing, first of all, the contributions of concessioners and for the lack of accountability in terms of the entire process. Now we are putting it onto a formalized basis, and there may be some room for that. But there are a lot of concerns that are growing out of it.

Has the general management plan, Mr. Finley, been modified to respond to the new business proposition or new concessioner contract for Yosemite? Has the concession plan been modified?

Mr. FINLEY. Yes, it has. The concession services plan is a supplemental environmental impact statement that modified the 1980 general management plan. It was an attempt to look strictly at the types and levels of concession services authorized within Yosemite National Park.

It did several things. I have already spoken to the fact that it reduced the accommodations.

Mr. VENTO. For the general public.

Mr. FINLEY. Yes.

Mr. VENTO. Did it reduce accommodations for the concession employees specifically?

Mr. FINLEY. No. That element is not addressed. The concession housing will be addressed in the housing environmental impact statement, of which a draft has been issued and a final document is still under consideration.

Mr. VENTO. Well, the general management plan said to remove the ice rink. Has the general management plan been modified in that sense?

Mr. FINLEY. The general management plan said that the ice rink should be on a seasonal basis. It should operate in the winter, and it should be taken down in the summer. In other words, the concept was portability. Those really don't exist. As a result of the concession services plan, we determined to keep the ice rink in Yosemite Valley.

Mr. VENTO. Has the general management plan been modified to reflect that?

Mr. FINLEY. Yes. The concession services plan is an amendment of the general management plan.

Mr. VENTO. Can you highlight the other important changes in the general management plan based on the proposed concession contract?

Mr. FINLEY. Yes. Briefly it reduced lodging in Yosemite Valley from 17 percent to 20 percent, park-wide from 13 percent to 15 percent. It reduced overall gift and souvenir sales outlets by 25 percent. So, you will see a 25 percent reduction in retail types of sales. It modified places where there will be no longer provided horse or livery type operations within the park. It looked at places like Wawona where the general management plan proposed additional accommodations, and we did not provide them.

It does increase food service park-wide by 4 percent and in Yosemite Valley by 2 percent.

The general management plan called to build a new store in Yosemite Valley. We deemed that that was inappropriate in 1990 to build a new retail store in Yosemite Valley. So, that has been amended.

The general management plan authorized a construction of an additional bicycle rental facility in Yosemite. We found a way to use existing structures. So, we amended the plan in that regard.

So, in almost all cases, we feel that overall we reduced structures in Yosemite by 477 structures. In fact, over the 1980 plan, there is a net. The 1980 plan would reduce 148.

Mr. VENTO. Are these all a result of the concession contract, or are they ongoing works of Superintendent Finley and others?

Mr. FINLEY. No. This is a result of the concession services plan, Mr. Chairman. The GMP had a goal. For example, in structures, it was 148, and the concession services plan will be taking out 254. So, we believe we took the goals of the general management plan, changed the prescriptions in a manner that was more sensitive to reclaiming priceless beauty and restoring natural processes.

Mr. VENTO. Well, as I look over items of interest here from the Park Service in terms of things added since the 1980 general management plan, they talk about net profit centers since 1980 initiated by the Yosemite Park and Curry Company not identified in

the general management plan. They include obviously, the pizza, the ice cream, the raft rental, wine tasting, photo finishing, video rental, tobacco shop, camp store, ice rinks, summer only it says here, but that apparently has been modified.

Obviously, some of these are not being left behind. Some of them are more substantial in terms of rooms increased in the Wawona, Yosemite lodge rooms increased slightly. Curry Village rooms decreased. The housekeeping cabin spaces remain. I hope that we are going to get rid of the temporary tent housing and so forth there and that there will be substantial progress.

But, obviously, all of this will reflect on the profitability of whoever the successful concessioner is in the contract, apparently the Delaware North Company.

The concern, of course, in profitability, as you look through these, is that trying to push them down has some impact in terms of the agreement. It seems to me that it is sort of open-ended. There is a provision in the contract, reflecting the law, that says that the successful concessioner bidder here has a right to be profitable.

One of the major concerns that has been raised is that, notwithstanding the fact that we have gone through a bid process, that all of this really will come down in a few years, and you implied this yourself, Mr. Davis, to reexamining this contract, and the sort of commitments made in 1993 may really evaporate in 1997 or 1998 when you reevaluate what is possible because of that particular phrase about profitability. What is the prospect of that?

The Park Service still maintains the control over some of the prices of various items and so forth that are sold. All of that is in place. We still have other types of entities that are not part of the concession contract that basically have concessions in Yosemite Valley as well.

So, what is your answer to the issue really that in 4 years, all of this in a 1993 contract will simply be so much rhetoric because it will be subordinated to the almighty requirement for profit—an insurance of profit, pardon me.

Mr. DAVIS. We have no absolute guarantees, Mr. Chairman. However, there was considerable financial analysis done and financial pro forma prepared of this operation, and it was professionally developed, reviewed, analyzed, and felt to be achievable, again with the idea that something can go awry. We doubt seriously that it will, and we feel that we have professionally assured ourselves, as reasonably as we can, that we will be able to fulfill the terms of the contract.

You are correct. At the end of 4 years, we will have to revisit that issue because the Concession Act of 1965 does provide that the operation offered by the United States should afford the concessioner a reasonable opportunity to make a profit. If something is changed dramatically and no one is coming to Yosemite Valley and the bottom has fallen out of the business, or other unforeseen financial occurrences come along, then they are going to have to be dealt with at those intervals. That works both ways, both up and down, in terms of the return to the United States.

But I feel again that we have reasonably assured ourselves that the proposal that we are entertaining now is financially sound and will be achieved.

Mr. MILLER. Do you want a follow-up?

Mr. VENTO. Well, no. I have other questions.

Mr. MILLER. Mr. Lehman.

Mr. LEHMAN. I just have a few more questions.

Explain again the process that will take place 4 years from now.

Mr. DAVIS. Basically in 4 years, we will renegotiate the return to the United States based on the financial operation that has occurred and what our newest projection is.

Mr. LEHMAN. When you say renegotiate, what exactly do you mean? What is the incentive for Delaware North to modify the contract?

Mr. DAVIS. Well, it is a condition of the contract that is recognized, and there is nonbinding arbitration provided in that contract over these points, with the Secretary's decision being final.

Mr. LEHMAN. So, in other words, you have the final say, period.

Mr. DAVIS. Yes, we do.

Mr. LEHMAN. So, the answer is they have every reason to settle with you regarding those terms.

Mr. DAVIS. Correct.

Mr. LEHMAN. What is on the table in 4 years, the rate of return?

Mr. DAVIS. What is on the table is the financial history so far and the financial projection into the future at that point relative to this operation. It will be reanalyzed and renegotiated.

Mr. LEHMAN. One other area that I wanted to get into. What were the respective roles of the Park Service and the National Park Foundation in negotiating with MCA on the purchase?

Mr. DAVIS. I would like Mr. Hanslin to answer that.

Mr. HANSLIN. Well, it was a coordinated effort, but the National Park Foundation was the entity that actually entered into the contract with MCA. The National Park Service had to approve that contract under our usual procedures. So, we were all in the same room, and it was a coordinated effort.

Mr. LEHMAN. The draft contract had a provision in it requiring a half-million-dollar payment to the Foundation. Is that in the contract?

Mr. HANSLIN. It is not in the contract per se, but it is in the peripheral documents to it. It is a reimbursement for the due diligence expenses the Park Foundation—

Mr. LEHMAN. Well, since GAO determined that the Foundation lacked the legal authority to take part in the transaction, why are we reimbursing their costs?

Mr. HANSLIN. Well, the Department did not necessarily agree with that, and I believe Secretary Lujan wrote back to Congressman Dingell and took a differing opinion.

Mr. LEHMAN. So, you are just choosing to ignore what GAO said and say you disagree.

Mr. HANSLIN. Well, I think Secretary Lujan considered it very carefully, but the decision was to proceed.

Mr. VENTO. If the gentleman would yield. I thought that the legal work was pro bono, wasn't it?

Mr. HANSLIN. I am not party to all of that, but some of the legal work that the Foundation received was pro bono. Some of it wasn't, and they also hired, as I understand it, a number of accountants and environmental experts and all kinds of people.

Mr. LEHMAN. Is it your belief that fees to the public and the park for enjoying being there are not going to go up as a result of this contract?

Mr. DAVIS. Yes, it is.

Mr. LEHMAN. I will ask Mr. Finley for the benefit of my constituents for the record here. You have no plans to change the operation of the golf course, the ski area, or the Brace Bridge dinner? [Laughter.]

Mr. DAVIS. Mr. Finley.

Mr. LEHMAN. Or the ice cream stand.

Mr. FINLEY. The concession services plan addresses those types of activities, and we reaffirm the national policy that there are blackout periods where groups and conventions and special events are not appropriate in Yosemite. That blackout period right now I think is from May 1 through October where it is inappropriate to have those type of activities where they would conflict with normal reservations and general occupancy of the general public.

As far as the golf course and the downhill ski area, the concession services plan provided an opening for continued reevaluation of the appropriateness of those activities and any new environmental impacts that would be revealed as a result of conducting those activities. So, the future of the golf course and the downhill ski area remains subject to reevaluation in the future.

Mr. LEHMAN. Also, as you know, transportation is a major issue in the park. Do those issues in any way interface with the terms of this contract?

Mr. FINLEY. Yes, they do. The old contract provided the Curry Company with a preferential right of transportation. That preferential right in many ways constrained the ability of the Government to work beyond our boundaries on cooperative transportation efforts.

The new contract has no preferential right for transportation or any other service. That allows us to enter into joint power agreements for transportation and other types of cooperative activities to enhance the arrival of guests to Yosemite in an efficient and ecological manner. So, we have greater freedom now to work in the transportation arena than we did before.

Internally the contract provides and the concession services plan provides for increased shuttle systems, distribution of visitors within the park.

So, transportation is really to be looked at in kind of two nodules. One is the intrapark shuttling of visitors. The other is the cooperation and coordination in the arrival of visitors to Yosemite.

Mr. LEHMAN. With respect to the latter, the arrival of visitors to Yosemite, right now they are required to use Curry Company transportation in the park or have an agreement with Curry Company where they compensate Curry Company for the right to use their own transportation. Is that correct?

Mr. FINLEY. That is incorrect. That used to be the case.

Mr. LEHMAN. Yes. That is the way it is right now, and it will change—no? You've changed that already?

Mr. FINLEY. With the sale agreement, the Curry Company agreed that—it was called the trip lease program—we would jointly do away with that program. So, since the signing of the sales

agreement, Curry Company has not charged a trip lease fee to buses entering Yosemite National Park.

Mr. LEHMAN. On the transportation within the park, can you be any more specific? You said increase the public transportation system. What do you mean?

Mr. FINLEY. Well, we have immediate plans to extend the Yosemite Valley shuttles to more westward locations. For example, we would look at anything to reduce the use of private automobiles, people taking day-use trips. We would expand the shuttle system that we began two years ago in Tuolumne Meadows. We see further need to expand and refine shuttle systems in the Wawona area. We may need to develop a shuttle system from Badger Pass, for example, to Glacier Point, as that corridor becomes more crowded and we need to reduce impacts. So, I think the concepts are there and the mechanism is there to implement it. It is an imperfect mechanism.

Mr. LEHMAN. Just finally on this cleanup issue we addressed earlier, I think I can understand the problem here. It is very difficult to quantify with any certainty what this is going to cost, and what both parties have to have is some kind of comfort zone here where they feel comfortable. Obviously, the concessioner felt comfortable, in this instance, Delaware North, with assuming 100 percent of the liability based upon what they knew about it. Obviously, you feel comfortable with Delaware North accepting that, but do you have faith in their determination that they can carry that under these existing terms?

Mr. DAVIS. Yes, I do have faith in that. I think it is important also to note that their financial pro forma that they submitted as a part of their response budgeted \$1.9 million a year in the initial phases to achieve this goal. So, we see it in their business outlook at this.

Mr. LEHMAN. If it turns out, as it often does, that this is going to cost an awful lot more than was anticipated on the front end, is that also on the table in 4 years in terms of the financial outlook?

Mr. DAVIS. It would be on the table in the sense that if projects cost more, perhaps as many projects will not be completed.

Mr. LEHMAN. Mike, are there any big environmental costs anticipated beyond the cleanup of the tanks? Are there other things besides those tanks?

Mr. FINLEY. There is the superfund obligation from the Purity Oil superfund site, but beyond the tanks and some asbestos, I can't think of any right now.

Mr. LEHMAN. That is the site in Fresno?

Mr. FINLEY. Yes.

Mr. LEHMAN. Has their portion of liability for that been assessed yet?

Mr. HANSLIN. Their portion or their share of the liability has been assessed. The EPA advises that it looks like about \$125,000.

Mr. LEHMAN. So, most of it relates to that. There is nothing out there that you know of beyond that.

Mr. FINLEY. No, not that I am aware.

Mr. LEHMAN. Thank you very much.

Mr. MILLER. On the issue of the government improvements, if I am doing this right, what future, if any, possessory interests can the new concessioner achieve?

Mr. DAVIS. The new concessioner can achieve no possessory interests through this contract.

Mr. MILLER. I do not think that is quite accurate, and I am not playing stump the witness. I am just trying to determine if they make a major capital improvement, what do they achieve. The Government and the concessioner may agree to have the concessioner build a building, if you will. The concessioner achieves a possessory interest in that, do they not?

Mr. HANSLIN. Yes. Let me just make sure you get that correct. The capital improvement fund is going to be used to build improvements. There is no possessory interest vested from—

Mr. MILLER. In that fund.

Mr. HANSLIN. But the concessioner, if it chooses and agrees with the Government, might put in its own additional money to build a building, in which case they would get a possessory interest on an essentially book value schedule.

Mr. MILLER. There is no requirement that they amortize it the same way we do or they depreciate it the same way we do.

Mr. HANSLIN. No. If they do get that type of possessory interest, they will have to amortize it on a 30-year, straight-line depreciation or amortization. If you give a hypothetical, let's say—

Mr. MILLER. For your purposes they have to do that. They do not have to do that for tax purposes.

Mr. HANSLIN. Well, right now it coincides, as a matter of fact, but the tax law may change. But for our purposes, that is correct.

Mr. MILLER. The government account—what is the official name of it—the government improvement fund. What is the purpose of this?

Mr. DAVIS. Basically that is the account that is set aside to maintain the Wawona complex, which is owned by the United States. In effect, it is a building-use fee for Wawona in which they will maintain those historic structures, according to a well-established on behalf of the United States will maintain those historic structures.

Mr. MILLER. So, when you use the amount, \$212,000, that should be attributed simply to Wawona.

Mr. DAVIS. Yes, sir.

Mr. MILLER. That should not be attributed to other maintenance within the park.

Mr. DAVIS. That is correct.

Mr. MILLER. How is that handled?

Mr. DAVIS. Pardon?

Mr. MILLER. How is that handled? Under general maintenance agreements with the concessioner?

Mr. DAVIS. Again, it is basically set aside and held in an account, and then the expenditure of that is approved by the superintendent relative to and consistent with the historic preservation plan.

Mr. MILLER. That is with respect to the account. With respect to any other facilities in the park, no such account exists. Is that correct?

Mr. DAVIS. There is a repair and maintenance account of the Government-owned assets that is of considerable value annually, approximately \$6 million, that the concessioner will expend in capital type maintenance or cyclic type maintenance of the Government-owned facilities.

Mr. MILLER. That is for all of the facilities.

Mr. DAVIS. That is all others.

Mr. VENTO. Well, Mr. Chairman, will you yield on that?

Mr. MILLER. Yes.

Mr. VENTO. As I look over exhibit C of the draft contract, it goes into, well, hundreds of thousands of dollars for other purposes than just Wawona. Maybe I am misunderstanding this.

Mr. MILLER. There is a line drawn under Wawona, and then you go on to list all of the other facilities in the park. Is that part of that \$6 million maintenance account then?

Mr. DAVIS. Yes, it is. There is another commitment relative to maintenance that the new concessioner will assume that was previously done by the National Park Service, which includes increased responsibilities of paying for some certain snow removal and hazard tree control programs within the areas that are assigned. These additional responsibilities transferred to the new concessioner will amount to close to three-quarters of a million dollars a year.

Mr. VENTO. I understand that, and that is a good line of questioning and understanding. I think this shows good progress, I might say, in terms of that.

But I am looking at the 14 pages under exhibit C. It may be for snow removal, but the Wawona annex includes a golf shop. The first number there is \$53,000, and then it goes to the White Cottage, Washburn. Those are all in the Wawona complex I guess.

Mr. DAVIS. Yes.

Mr. VENTO. But there are others. Apparently Yosemite Village is included. You have a number of cabins. Glacier Point is included. Out of the Yosemite Valley, in fact, these are. So, there are reoccurring things, El Portal, as I go through it. Of course, it is not limited to Wawona exactly here. So, what am I misunderstanding here, Mr. Davis?

Mr. DAVIS. No. Mr. Chairman, that is the cost of the general maintenance agreement throughout the park.

Mr. VENTO. It says the account program here. In article 10, it says in order to carry out the account program, the concessioner shall deposit within 15 days of a day of each month a sum equal to the current monthly amount allocation. You are saying that is the maintenance. It is part of section 10, the government improvements account, the way I am reading this.

Mr. HANSLIN. Mr. Chairman, the government improvement account actually applies to Government-owned buildings which are assigned to the concessioner, and they put that money in to repair them. I think it is our understanding that almost all of those buildings are at Wawona. If there are other buildings elsewhere that are Government-owned, they would be—

Mr. VENTO. Well, there are some that are outside Yosemite.

Mr. HANSLIN. No, I do not believe that is the case.

Mr. VENTO. Well, that is what the document says. I know the park and I know some of those areas are outside.

But my concern is that this just seems like it is far in excess of the \$212,000 that was expressed here as being in this account.

Mr. DAVIS. There is an amount of \$6 million annually that is set aside for maintenance of facilities throughout the park.

Mr. VENTO. Well, won't it be under this account heading, and will it be managed in this account? You are suggesting that I am misinterpreting this I guess.

Mr. DAVIS. It is in the contract, it is my understanding, as part of the maintenance agreement.

Mr. HANSLIN. Right. I think the confusion, Mr. Chairman, is that for Government-owned buildings, which are assigned to the concessioner—and I think they are mostly at Wawona—we established this government improvement account whereby the concessioner pays the value of the use of those buildings into the account, and the account gets used to maintain those buildings.

In addition to that, there is an obligation of the concessioner, of course, to maintain all of the buildings in the park that they use, even those—I used the term owned—but which they own. Those obligations are spelled out in the maintenance agreement, but there is not a special account set aside for the moneys that go to the maintenance agreement. That is \$6 million what we have not tried to put into a special account.

Mr. MILLER. Let me see if I can do something quickly before we go to vote.

On the capital improvement fund, you state that the concessioner shall create and manage a capital improvement fund by which it will undertake on a project basis improvements which directly support concession services. What does that language "directly support concession services" mean?

Mr. DAVIS. It basically means that it has to go into those facilities and infrastructure that support concession programs and are a part of it. We cannot use that money for general management purposes within the park.

Mr. MILLER. Why?

Mr. DAVIS. Because we are not authorized to do so. Under the current legal opinions that we have relative to these special accounts, that funding must be associated with the operation itself.

Mr. MILLER. What kinds of things does that not allow you to do?

Mr. DAVIS. Well, I guess it would not allow us to hire park staff.

Mr. MILLER. Would it allow you to do trail maintenance?

Mr. DAVIS. Not at the present time, no, sir.

Mr. MILLER. What about trail maintenance between the High Sierra camps?

Mr. DAVIS. They are only a partial user of that particular—

Mr. MILLER. Well, do we get to apportion some of that to this account?

Mr. DAVIS. We have been concerned about apportionment of those funds in that direction.

Mr. MILLER. What do you mean you're concerned?

Mr. DAVIS. Well, concerned with our authority to do so.

Mr. MILLER. Pardon?

Mr. DAVIS. Concerned with the authority in our appropriation to do so.

Mr. MILLER. Well, Chairman Vento talked about the creation of these accounts and your legal authority. Your position is that you have that authority, and that may well be.

But I think it starts to raise a rather serious question because this contract is being held out as going to benefit the entire park. Yet, these three words "support concession services" raises a little different specter, and that is that you have the revenues that are yielded by the concession being plowed back into the concessions for the benefit of the concessions.

Now, under the old arrangement, it was sort of like that and a little different because it was slap, dash, the best you could. But you also had the concessioner building facilities for the park use that may or may not have been related to concessions, and it was some benefit to the general park.

I am somewhat concerned about the restrictive nature of that language. I appreciate that they are only partial users of the trails and what have you, but the people who come, obviously, to enjoy the Yosemite experience and perhaps stay in the lodge or cabin or do whatever, also have some expectations about the condition of the park and the experience that they are going to have. You are saying that is our burden at the appropriations level, and this will take care of the concessions. There is some division going on here that I do not know if it has been formally discussed.

Mr. DAVIS. Well, we can make the association that you just did, Mr. Chairman, but we are also told that we do not have the authority to expend those funds on those items of management of the park that are not currently directly related to concession operations. It does not mean, however, that it might not be a very good idea to seek that.

Mr. MILLER. Well, let's assume your position is correct. There are some people who have taken the position that this should await legislative action on the overall concession policy. Then we have contractual rights that have been established here as to the uses of this money. Then we change the policy, but then we have to live with the Yosemite contract and its contractual rights because they are certainly entitled to their contract.

This is a lot of money, and when we are struggling here to see how we support the parks, it just creates some problems, and I just want to make sure we are doing this with our eyes open. I do not think I have to spell out the problems it creates on Capitol Hill when parks that do not have the benefit of this are struggling with their problems, and the suggestion is now that Yosemite is a rich park. We know that not to be true when you know the list of maintenance and projects and things you have to do to accommodate the pressures on the park.

Now, inside the contract, this money that will be generated—I do not know the net value of it—is restricted essentially to the benefit of the concession. And that is to the public too. If the trails in the valley are in disrepair, you cannot get up to the falls, it is a different experience, and you may not think about coming back to the concession.

Mr. DAVIS. Well, there are a couple of points that I would make. One is that if Congress changes the authority on the expenditure of that money, then many of the funds from these accounts that the concessioner is holding could be redirected to other activities.

Mr. MILLER. Put on your hat for a minute and put yourself in the position of the concessioner and think about that answer.

Mr. VENTO. The other point is I guess that you have chosen—

Mr. MILLER. He is entitled to his bargain, with all due respect.

Mr. DAVIS. He basically has his bargain in my judgment, and certainly not all of these funds would go in a different direction. Please do not misunderstand me. But it would be easy for us to make certain ties, as you did, Mr. Chairman, to the general good of the visitors in the park, and if some of those items took over a higher priority than other maintenance needs, we would have the authority to redirect the funds into those specific projects.

Mr. MILLER. We are going to recess to go vote, and we will be right back.

[Recess.]

Mr. MILLER. I know this is hard for you to believe, but we are coming to a close here.

I really want to thank you for your time and your willingness to lay these answers out on the record. I think it is important to this entire process.

Let me just ask you on another matter, if I might, and that is, again my understanding is that on the CIF contribution for Delaware North, there apparently is an agreement as to a contribution of 5.2 percent of gross revenues, but it could be adjusted to 4.7 percent in some limited circumstances. Are you at liberty to tell us what those limited circumstances may or may not be?

Mr. DAVIS. I will attempt to do so, and I believe I can.

The 5.2 percent, incidentally, includes the government improvement account of \$212,000 in that instance. So, what we are really talking about is a 5-percent commitment to the capital improvement account and a 4.5-commitment to the capital improvement account, the difference being that when the operational assets and liabilities of the Yosemite Park and Curry Company are assumed by the new concessioner, if they balance, then the CIF contribution will be 5 percent. If they do not balance, they have made a commitment to the 4.5 percent. That is the difference in the presentation. If they do not balance in terms of the liabilities exceeding the assets.

Mr. MILLER. That would continue for how long? To erase that deficit?

Mr. DAVIS. That would continue, as it is now stated, for the life of the contract, but remembering again that we will revisit that issue in 4 years.

Mr. MILLER. So, you will not know until the time of closing what the deficit may be.

Mr. DAVIS. That is correct.

Mr. MILLER. Does a deficit of any amount trigger the difference between 4.5 and 5?

Mr. DAVIS. Yes, it does I believe, although Mr. Hanslin wants to add something, if he may.

Mr. HANSLIN. We have, as part of our negotiations, an arrangement now whereby if, let's just say hypothetically the deficit was \$10, then the drop would not be from 5 to 4.5 percent. It would be 5 to a level commensurate with the \$10 or the \$1,000 or whatever.

Mr. MILLER. What if it is \$6 million or \$7 million?

Mr. HANSLIN. 4.5 is the absolute as low as it can go.

Mr. MILLER. I have to figure out the value of that.

Mr. VENTO.

Mr. VENTO. Well, Mr. Chairman, I had the same question basically on the working capital. As I understand, the capital improvement fund and the government improvement account are basically a composite in that between 4.5 and 5.2 payment. Is that correct?

Mr. DAVIS. That is correct. The difference whether you use 5.2 or 5 is half a percent down.

Mr. VENTO. The point is that we were told, of course, based on the purchase agreement, there is the expectation that MCA and its parent company have been pulling all of the dollars out of that particular area in the business, and that there is a chance that the Yosemite Park and Curry Company, or the MCA element there, would be worth not 0 percent, but be actually deficient in some respect. Isn't that one of the reasons that you have required or at least looked to the \$12 million capitalization of the prospective business to which you have made the final judgment to award?

Mr. DAVIS. Yes, it is.

Mr. VENTO. So, the point is, there is the expectation there has to be working capital. So, that much would be contributed.

You have mentioned before, Mr. Davis, that you expect that the equivalent would be 20 percent of revenues that would be paid, 20 percent of gross revenues. Is that correct?

Mr. DAVIS. Yes, approximately.

Mr. VENTO. In other words, then we are to assume that the other 15 percent or so would be paid for the possessory interest note. Is that correct?

Mr. DAVIS. Yes. A sizable portion would involve the possessory interest note and the interest associated therewith. It would also involve the government improvement account. It would involve the additional maintenance responsibilities that we have transferred to the operator, to the new concessioner, and it would involve the repair and maintenance account of the concessioner for the facilities.

Mr. VENTO. You obviously will not receive any dollars for that. Those would be legitimate expenses. Under a normal business arrangement, those would be legitimate expense elements that they would have. Is that correct?

Mr. DAVIS. No. They are beyond totally normal business expenses. We are talking about the buy-back of the possessory interest and the depositing of that in the name at the end of the contract with the United States, and we are talking about other expenses in maintaining Government-owned facilities in which the concessioner again has no possessory interest, therefore does not have an escalating—

Mr. VENTO. They have varying degrees of interest I guess, but no possessory interest anymore.

Mr. DAVIS. Correct. No capital.

Mr. VENTO. The note is the issue that takes care of not just possessory interest, but all the assets of the Yosemite Park and Curry Company. So, that is a separate payment. But basically all these buildings I suppose and structures that are there, we have to look at it as now being ours.

Mr. DAVIS. Correct.

Mr. VENTO. So, I think the distinctions that we have made in the past really should not hold for the way we look at the management of the park. What you are trying to do is set up various accounts to make certain that these buildings are adequately maintained so that in a period of years, 10 years, if something happens with Delaware North—or whoever finally is—withdraws from this agreement, they default, that the buildings will have been adequately maintained over that time so we are not left with a series of significant outstanding deficiencies.

Mr. DAVIS. Correct.

Mr. VENTO. So, I think the question, of course, for us in terms of trying to give this a review is to understand exactly what that entails and whether or not they can execute that. As I sit here and listen to the discussion about it, I have an uneasy feeling, I must say, that some of this which is on paper is not going to be materially accomplished simply because of the type of cash flow and other types of requirements that might be placed on Delaware North and that in 4 years all of these commitments will be revisited and reduced. Of course, if there is a default, obviously, you have a rather unusual circumstance in terms of the National Government really being placed in a situation where we have to have MCA agree to whatever the action is that is taken.

Mr. Chairman, I just want the personnel from the Park Service to know I understand they have been working very hard on what was a very difficult problem—it seems to me that these accounts really do cause some difficulty. I do not know how else we can deal with the problem. After looking at it, I do not have any quick and easy solutions. With these type of accounts and with the type of revenue flow here, it may be impossible for the Park Service to take any effective steps to reduce the extent of commercial activities in Yosemite. That is what I fear.

Mr. Davis, do you have any response to that? Is this contract and the execution of this contract going to drive the types of activities to take place in Yosemite?

Mr. DAVIS. No. What drives the activities that take place in Yosemite Valley relative to this contract is the concession services plan itself that was prepared and approved prior to the issuance of the statement of requirements for this concession operation. So, that is the driving document.

Mr. VENTO. Are you anticipating including similar government improvement accounts or capital improvement funds or both as part of new concession contracts?

I know that the Solicitor's representative today had said that he had about 10 other contracts that have similar types of provisions, but do they actually create or designate those types of accounts in such contracts?

Mr. DAVIS. Yes, they are designated in some of our other concession contracts at the current time.

Mr. VENTO. So, I think probably a list of those would be helpful for me in terms of trying to understand that and the performance of them, or at least some notation as to the performance of them. We obviously have a detailed understanding of the performance of them.

Mr. DAVIS. I would be happy to provide that list for you.

[The list of concession contracts which have government improvement accounts or capital improvement funds follows:]

(1) CONTRIBUTOR AND RE/MINUTIA ON/DATE	(2) METHOD OF CALCULA- TION	(3) USE OF FUNDS	(4) ACCOUNTING FOR FUNDS	(5) BFS AMT. OF EXPENDITURES	(6) AMOUNT REPORTED FY OR CY	(7) 12/31/92 BALANCE
ICE CANYON NATIONAL PARK						
YEEZION TRAIL DES INC. TRACT 9/88	3% OF GROSS RECEIPTS ALSO PAYS 2.0% FRANCHISE FEE.	PRIMARILY TRAIL MAINTENANCE BUT ALSO MAINTENANCE, REPLACEMENT AND REPAIR OF FACILITIES.	INTERNAL BOOKKEEPING RECORDS FOR SUPERINTENDENT FURNISHED MATERIAL INVOICES AND LABOR COSTS ANNUALLY.	SUPERINTENDENT APPROVES ALL PROJECTS AND BUDGETS ANNUALLY.	\$10,794	\$8,915
ICE CANYON NATIONAL PARK						
RECREATIONAL AREAS INTEREST 1/3/84	3% OF GROSS RECEIPTS ALSO PAYS 2 1/2% FRANCHISE FEE	REPAIR, MAINTAIN OR REPLACE STRUCTURES.	INTERNAL BOOKKEEPING RECORDS CONCESSIONER SUBMIT ANNUAL REPORT OF EXPENDITURES	SUPERINTENDENT APPROVES PROJECTS AND BUDGETS ANNUALLY	\$183,481	\$117,481
AIN VALLEY NATIONAL MONUMENT						
RED HARVEY CO. TRACT /22/81	7% OF GROSS RECEIPTS ALSO PAYS 1.6% FRANCHISE FEE	IMPROVE FACILITIES OR NEW CONSTRUCTION.	DEPOSITED IN SEPARATE BANK ACCOUNT FOR CONCESSIONER PROVIDES MONTHLY STATEMENT TO SUPERINTENDENT. PARK CONDUCTS PROJECT TRACKING.	SUPERINTENDENT APPROVES SMALL TO MID-SIZE PROJECTS. REGIONAL DIRECTOR APPROVES LARGE DOLLAR VALUED PROJECTS.	\$193,300	\$34,294

(1) ACQUISITION AND DEAUTHORIZATION DATE	(2) METHOD OF CANCELLA- TION	(3) USE OF FUNDS	(4) ACCOUNTING FUND	(5) NPS AURAL OF EMPLOYEES	(6) AMOUNT DEPOSITED BY OR CY	(7) 12/31/92 BALANCE
IN CANYON NATIONAL RECREATION AREA	APPROXIMATELY A 1/22 AND ON TO VISION RATES PLUS 1/22 CONCESSIONER CONTRIBUTION ALSO RATES 1/22 PRORATE REC.	NEW CONSTRUCTION AND REHABILITATION OF FACILITIES	DEPOSITED IN SEPARATE BANK ACCOUNTS. CONCESSIONER RETAINS DOCUMENTATION TO VERIFY THE EXPENDITURES WHICH ARE SUBJECT TO INDEPENDENT AUDIT. THE SUPERINTENDENT AND CONCESSIONER REVIEW THE STATUS OF THE FUNDS ANNUALLY.	SUPERINTENDENT APPROVES PROJECTS AND AUTHORIZES EXPENDITURES ON A PROJECT BASIS.	\$2,390,605	\$2,430,906

(1)	(2)	(3)	(4)	(5)	(6)	(7)
ACCESSION AND REAUTHORIZA- TION FEE	METHOD OF CALCULA- TION	USE OF FUNDS	ACCOUNTING FOR FUNDS	IPS AUTH. OF EXPENDITURES	AMOUNT DEPOSITED FY OR CY	12/31/92 BALANCE
AND EPSON PRINTERS UNTIL 1/1/93						
RECREATIONAL SERVICES, INC. WBS: REPAIR AND MAINTENANCE COUNTRY CLUB 1/13/88	3 1/2% OF GROSS RECEIPTS. ALSO PAYS 2% FRANCHISE FEE.	REPAIR AND MAINTENANCE OF BUILDINGS AND REPLACEMENT OF NON-EXPENDABLE EQUIPMENT.	INTERNAL BOOKKEEPING RECORDS. SUPERINTENDENT FURNISHED DOCUMENTATION OF EXPENDITURES ANNUALLY	SUPERINTENDENT APPROVES PROJECTS, BUDGETS, AND WORK SCHEDULES	\$182,477	\$28,632
INFRASTRUCTURE IMPROVEMENT PROGRAM CONTRACT MEETING 3/2/89	3 1/2 % OF GROSS RECEIPTS EXCLUDING RECEIPTS FROM NEW LODGING FACILITIES	IMPROVEMENTS TO EXISTING FACILITIES AND NEW CONSTRUCTION	DEPOSITED IN SEPARATE BANK ACCOUNTS. RECONCILED AT CLOSE OF CALENDAR YEAR.	SUPERINTENDENT PROVIDES PRIOR APPROVAL FOR EXPENDITURES.	\$192,441	\$29,401
ISSER VOLCANIC NATIONAL PARK CALIFORNIA GUEST SERVICES, INC. CONTRACT 1/26/82	\$34,355 YEARLY IN LIEU OF A BUILDING USE FEE.	MAINTENANCE OF FACILITIES USED IN THE OPERATION.	DEPOSITED IN SEPARATE BANK ACCOUNT. MONTHLY STATEMENT FURNISHED TO PARK.	SUPERINTENDENT APPROVES PROJECTS AND COSTS	\$30,515	\$38,000

(1) PURCHASER AND IDENTIFICATION NUMBER	(2) METHOD OF CASH FLOW	(3) USE OF FUNDS	(4) ACCOUNTING FOR FUNDS	(5) NO. AUTH. OF EXPENDITURES	(6) AMOUNT DEPOSITED BY OR TO	(7) 12/31/92 BALANCE
ESA VERDE NATIONAL PARK	15% OF EMPLOYMENT GROSS RECEIPTS. ALSO PAYS 12% FRANCHISE FEE. 12/20/91	MAINTENANCE REPAIR AND REPLACEMENT OF CAMPGROUND FACILITIES.	INTERNAL BOOKKEEPING RECORDS. SUPERINTENDENT FURNISHED CONSTRUCTION OF EXPENDITURES ANNUALLY.	SUPERINTENDENT APPROVES PROJECTS, AND BUDGETS ANNUALLY.	650,423	935,411
SAINT RUSHMORE NATIONAL MEMORIAL	5.15% OF GROSS RECEIPTS, ALSO PAYS 5% FRANCHISE FEE.	PAY BALANCE OF THE ENERGY CENTER LOST OBLIGATION	INTERNAL BOOKKEEPING RECORDS	AS AUTHORIZED TO RENEW ENERGY CENTER BALANCE.	934,324	939,500 OBLIGATION BALANCE
SERENITY AND KING CANYON NATIONAL PARK	\$425,747 YEARLY IN LIEU OF A BUILDING USE FEE.	REPAIR, MAINTENANCE, AND IMPROVEMENTS TO GOVERNMENT BUILDINGS.	DEPOSITED IN SEPARATE BANK ACCOUNT. MONTHLY BANK STATEMENTS FURNISHED TO SUPERINTENDENT	PARKS' FUND ADVISORY COMMITTEE EVALUATES PROPOSED PROJECTS SUPERINTENDENT APPROVES PROJECTS AND PROJECT BUDGETS.	929,043	946,578

(1) CONCESSIONS AND
ART/AMPHITHEATRE
100/PAGE

(2) METHOD OF CALCULA-
TION

(3) USE OF FUNDS

(4) ACCOUNTING FOR
FUNDS

(5) MFS AMT. OF
EXPENDITURES

(6) AMOUNT REPORTED
FY OR FY

(7) 12/31/92
BALANCE

NEALPOON
NATIONAL PARK

AA VIRGINIA SKI
INC. CO.
UNTERKNECHT
VIRGINIA
2/18/92

2% OF GROSS
RECEIPTS IN
ADDITION TO
BUILDING USE FEE
OF \$3,500. 3%
FRANCHISE FEE 10%
TREASURY AND 2%
TO EXTINGUISH
CONCESSIONER'S
POSSESSORY
INTEREST.

FACILITY
CONSTRUCTION
REHABILITATION,
AND EQUIPMENT
PURCHASES.

DEPOSITED IN
SEPARATE BANK
ACCOUNT

REGIONAL DIRECTOR
APPROVES ALL
PROJECTS
SUPERINTENDENT
PROVIDES ADVANCE
APPROVAL FOR
EXPENDITURES

\$177,208

\$364,290

THE DOORE
RECREATION
NATIONAL PARK

PEACEFUL VALLEY
TRAIL RIDERS, INC.
PERMIT
6/29/88

3% OF GROSS
RECEIPTS IN USE
OF BUILDING USE
FEE.

MAINTENANCE OF
GOVERNMENT OWNED
FACILITIES.

DEPOSITED IN
SEPARATE BANK
ACCOUNT.
SUPERINTENDENT
FURNISHES LABOR
AND MATERIAL
COSTS AND
PROVIDES UPON
COMPLETION. YEAR
END ACCOUNTING
PROVIDED AND
VERIFIED.

SUPERINTENDENT
APPROVES PROJECTS

\$2,538

\$4,725
3/31/92

(1)	(2)	(3)	(4)	(5)	(6)	(7)
ACCESSORIES AND AIR/ANTHRAZOLE COMBATE	PERIOD OF EXPIRATION TERM	USE OF (Name)	ACCOUNTING AND FUNDS	SP'S AUTH. OF EXPENDITURES	AMOUNT DEPOSITED BY OR TO	12/31/92 BALANCE
YELLOWSTONE NATIONAL PARK						
WILSON TOWNS, INC.	1/28 OF CROSS RECEIPTS, ALSO 2-1/2% ANNUAL 2-1/2% CROSS REE GAL. OF GASOLINE FRANCHISE FEE.	MAINTENANCE OF GROUNDS AND IMPROVEMENTS	NO SEPARATE ACCOUNT SUPERINTENDENT FURNISHED LISTING OF EXPENDITURES MONTHLY. COPIES OF CHECKS AND OTHER RELATED DOCUMENTS PROVIDED ON REQUEST.	SUPERINTENDENT APPROVES PROJECTS AND FURNISHES FOR FUNDING ON A PROJECT BASIS.	\$96,018	\$176,453 9/30/92
Y CREATION/DAI SERVICES INDUSTRIAL CONSTRUCTION AND IMPROVEMENT PROGRAM CONTACT 12/25/91	10% OF CROSS RECEIPTS	NEW CONSTRUCTION, REPAIR/REPLACEMENT OF FACILITIES, PURCHASE OF EQUIPMENT AND TO MEET OBLIGATIONS UNDER THE YELLOWSTONE PARK SERVICE STATION JOINT VENTURE AGREEMENT.	INTERNAL RECORDS RECORDS SUPERINTENDENT FURNISHED MONTHLY MONTHLY LISTING ALL PROJECT EXPENDITURES AND STATUS OF FUNDS AND PROVIDED ANNUAL SUMMARY OF ALL PROJECT EXPENDITURES AND STATUS OF FUNDS.	SUPERINTENDENT APPROVES PROJECTS ANNUALLY AND APPROVES EXPENDITURES ON A PROJECT BASIS.	\$3,132,218	\$1,482,134

(1) CONTRACTOR AND REVISIONS DATE	(2) METHOD OF CALCULA- TION	(3) USE OF FUNDS	(4) ACCOUNTING FOR FUNDS	(5) WFS NARR. OF EXPLANDICES	(6) AMOUNT DEPOSITED BY OR CT	(7) 12/31/82 BALANCE
SEMI-PAK TIOLE PARK						
SEMI-PAK AND RAY CO. NOS. VISION TRANSPORTATION SERVICES 5 YEAR LETTER AGREEMENT WAS SIGNED ON 4/1/83. INTERIM RENEWALS.	ADD ONE TO VISITOR LOGGING RATES RANGE FROM \$5.25 TO \$3.00 FOR HOTEL ROOM, HOTEL ROOMS AND CABINS WITHOUT BATH \$4.00 TO \$5.25, CABINS WITH BATH \$4.00 \$5.00 TO \$6.00 EATING \$3.50, AND HOUSEKEEPING CAMPS \$4.25. OTHER ADD DMS INCLUDE RAFTS .50, TRANSPORTATION SERVICES .50 AND .75, GROUND \$5 PER CALL AND \$4 FOR PARKING LITTER AND SOAKS.	ALL COSTS ASSOCIATED WITH VISITOR TRANSPORTATION IN YOSEMITE VALLEY, YANONA AND TUOLUMNE MEADOWS	INTERNAL BOOKKEEPING RECORDS. SUPERINTENDENT FURNISHED YEARLY REPORTS ON ADDITIONS AND WITHDRAWALS.	SUPERINTENDENT APPROVES ANNUAL AGREEMENT AND PROVIDES ADVANCE APPROVAL FOR EXPENDITURES.	\$1,436,539	\$263,659
WAGER PASS LITTLE AND WORKING LOT INITIAL LETTER AGREEMENT 2/19/83. ROW INDICATE ANNUAL INTERIM RENEWALS	ADD ONE TO LOGGING RATES SAME AS ABOVE AND .50 FOR SKI LIFT TICKETS. 25 1/2 DAY SKI RENTAL AND MIDWEEK SKI PACKAGE.	TRANSPORTATION SERVICE FROM YOSEMITE VALLEY AND YANONA TO BADGER PASS SKI AREA AND CONSTRUCTION OF PARKING LOT.	INTERNAL BOOKKEEPING RECORDS. SUPERINTENDENT FURNISHED YEARLY REPORT ON ADDITIONS AND WITHDRAWALS	SUPERINTENDENT APPROVES THE ADD- ON AGREEMENTS AND TRANSPORTATION OPERATING COSTS.	\$416,401	OVERCOMMITTED BY \$146,832 CONCESSIONER ADVANCED FUNDS

(1) SUCCESSION AND PARK/AUTHORIZATION/PATENT	(2) METHOD OF CALCULATION	(3) USE OF FUNDS	(4) ACCOUNTING FOR FUNDS	(5) SFS AUTH. OF EXPENDITURES	(6) AMOUNT DEPOSITED FY OR CY	(7) 12/31/92 BALANCE
<p>ELTON NATIONAL PARK</p> <p>JAYCEZION TRAIL RIDES INC. CONTRACT 3/9/88</p>	<p>3% OF GROSS RECEIPTS ALSO INCLUDES A FRANCHISE FEE.</p>	<p>PRIMARILY TRAIL MAINTENANCE BUT INCLUDES THE MAINTENANCE OF ALL FACILITIES.</p>	<p>INTERNAL BOOKKEEPING RECORDS SUPERINTENDENT FURNISHED MATERIAL INVOICES AND LABOR EXPENSES.</p>	<p>SUPERINTENDENT APPROVES PROJECTS</p>	<p>95,439</p>	<p>35,429 5/28/92</p>
<p>TM RECREATIONAL SERVICES, INC. CONTRACT 12/3/86</p>	<p>3% OF GROSS RECEIPTS</p>	<p>REPAIR, MAINTAIN OR REPLACE ALL FACILITIES USED IN OPERATION.</p>	<p>INTERNAL BOOKKEEPING RECORDS SUPERINTENDENT FURNISHED PROJECT COMPLETION REPORT AND INVOICES.</p>	<p>SUPERINTENDENT APPROVES PROJECTS AND BUDGETS ANNUALLY.</p>	<p>\$149,837</p>	<p>\$140,377</p>

Mr. VENTO. You do expect to use this particular model in the future. Is that correct?

Mr. DAVIS. Well, we use elements of the model, as I spoke earlier, certainly, but it will not be exactly the same because each contract has different dimensions to it.

Mr. VENTO. Well, I see. The point is I paid close attention to your response to the chairman's remarks because of the overlap or the lack of clarity that you are concerned about in these funds. It sounds as though, in terms of dealing with this issue, that in using these funds you are limited. You may not be able to do animal control in Yosemite Valley in spite of the fact that it has some impact on concession activities because it is an activity that does not deal wholly with the impact of the concession type of operation. So, it seems to me there is a case where there is overlap, strictures with regard to the law, at least the way you are interpreting it, and I think that that may raise questions too.

The other question that really comes back is, wouldn't it be better to share—there are a lot of national parks and so forth that have concessions that do not have the ability to raise any type of revenue. What happens to a system-wide system when we have one park that has this tremendous ability to raise revenue and to meet some of these needs and others don't from a park policy standpoint?

Mr. DAVIS. Well, at some point, the sharing of revenues from places like Yosemite with other parks may become a distinct possibility if it is authorized in law.

However, I would point out at this time the National Park Service has had a general management plan for Yosemite Valley since 1980 in which improvements were identified and sought with respect to protection of the park resources, improving the visitor experience, and generally supporting visitor activities in the park. We simply have been unable, financially, to achieve that through the normal process of funding.

The needs in Yosemite are so very great at this time that they represent a high priority need within the National Park Service, and I feel that this agreement has been structured in a way that will start us down the road to implementing these very important dimensions of the Yosemite plan, and we are doing it without appropriated funds. We see a way through this contract to accomplish those objectives.

Mr. VENTO. Well, Mr. Chairman, I have no further questions. I have a couple of statements. I ask unanimous consent they be placed in the record. A statement from the National Park Hospitality Association and a statement from Mr. Robert Redford.

Mr. MILLER. Without objection.

[EDITOR'S NOTE.—See appendix.]

Mr. MILLER. On the capital improvement fund, who can mandate the spending? Is it a joint venture? Can you direct them to spend the money?

Mr. DAVIS. Yes, we may direct them to spend the money.

Mr. MILLER. So, when it says projects will be selected by the superintendent, in accordance with the written approval of individual projects of the western region, this is anticipated that this is a Park Service function, and then you will go to the account for those

purposes. This is not at the discretion of the concessioner. Is that correct?

Mr. DAVIS. That is correct. We must approve. Now, that does not mean in the process that we will not accept and consider suggestions.

Mr. MILLER. No, no. But the concessioner cannot sit on this account.

Mr. DAVIS. No.

Mr. MILLER. He cannot veto what you want done.

Mr. DAVIS. No. We are the final authority on the expenditures.

Mr. MILLER. If I understand it right, if there is money left over at the end of the contract, it reverts to the Government. Is that correct?

Mr. DAVIS. I believe that is correct.

Mr. MILLER. On the question of the sliding scale that we talked about initially, again when you go back to the contracts, the satisfactory bids, TW said that they would pay 5.3 percent in the first years and 5.8 thereafter. The Restoration Trust indicated that it wanted to make a contribution of 2 percent in the first 4 years and 6.1 afterwards. The value of those contribution ranges, as I pointed out earlier, from somewhere around \$65 million to \$63 million to \$54 million and then Delaware North at \$56 million.

How did you weigh those?

Mr. DAVIS. They certainly were a consideration, but the return here was a secondary consideration overall. We weighed them and found that when you took off the conditions under which some of those figures you just quoted were structured, that basically the contributions to the capital improvement fund came out very close one to the other.

Mr. MILLER. On the question of return to the potential concessioners, if I can revisit this subject just quickly here, the question of liability will also determine that. Right?

Mr. DAVIS. Pardon?

Mr. MILLER. Some placed a cap on liability, as I said earlier, of \$12 million; Delaware North, unlimited; and other people somewhere in between. But in the return to the concessioner, it will have to be recalculated when we know the answer of the extent of that liability. Is that correct?

Mr. DAVIS. The entire business operation and financial posture will be evaluated at 4-year intervals, as a part of the contract.

Mr. MILLER. All right. Let me ask you. On the flip side of that, if in fact unlimited liability means great liability—let's say it means \$50 million or \$100 million—can Delaware North come in in this review process and say I can't make a reasonable profit under the statutory language or the right to make, whatever the term is, in the statutory language?

Mr. DAVIS. They certainly can ask for that. We are not required to grant it, but I think that it would be a matter of great deliberation if—

Mr. MILLER. How do you anticipate that that plays off against the statutory requirements on their right to a reasonable opportunity for the concessioner to realize a profit?

Mr. DAVIS. Well, basically the reasonable opportunity to make a profit is a decision that we must make relative to that matter.

There are many things that will have to be considered at the time relative to projected income in the next period, whether that could be overcome, et cetera. So, to say that it is a direct tie, I think is simplifying it. It is an issue that would have to be considered in the review at the 4-year intervals.

Mr. MILLER. Well, let me ask you to be a little bit more specific because the suggestion is certainly that in this bidding process, liability was a very important factor. It was the basis on which I think one, maybe two, were disqualified because they would not accept that. In fact, I think in the announcement, it was heralded that Delaware North was the only bidder that would accept unlimited liability. If you are starting to suggest here that that unlimited liability can be negotiated in the future, then that is not unlimited liability, and I suspect other bidders would have another view of what they were accepting or not accepting.

Don't shake your head "no" yet, Mr. Hanslin, because it goes to an important question. You have statutory language that suggests that the concessioner has this right to an opportunity to realize a profit under his operation as a whole, commensurate with capital investment requirements and other obligations assumed. Now, you are going to hang on "obligations assumed"—I assume you are representing the taxpayer—that you will say the concessioner accepted unlimited liability and that is, in fact, separate. But what if that brings down this concessioner—he says, "I can't make a profit. I can't recover from these expenditures related to this unlimited liability."

Mr. HANSLIN. I do not quite know what the question is.

Mr. MILLER. Well, the question is, are you going to provide relief. Does he have a right to relief?

Mr. HANSLIN. No, he does not have a right to relief.

Mr. MILLER. I think it is very important because unlimited liability is like unlimited liability.

Mr. HANSLIN. Well, that is the correct answer to that. There is no right to relief.

Mr. MILLER. Thank you. There is no end to the questions here. Will you guys stop it? [Laughter.]

The point is this. If that happens five, six, seven years down the road, they drop out of here, we are still left with the MCA note.

Mr. HANSLIN. That is correct, but we are left with the payments that have been made to date on that.

Mr. MILLER. And MCA has a right of reentry if payments are not made in the future.

Mr. HANSLIN. Under the terms of the contract. So, someone else will come in and take up the contract and continue to pay the note.

Mr. MILLER. Or we pay them off.

Mr. HANSLIN. We or a new concessioner can pay them off. Or this concessioner, the day after it signs the contract, if it wanted, could pay off MCA anytime between day one and year fifteen. In fact, in ten or twelve years, it may very well be attractive for Delaware North or for the Government, for that matter, to pay off the balance.

Mr. MILLER. What role did the issue of this liability play in the negotiations around the purchase figure, the \$49 million that was negotiated with MCA?

Mr. HANSLIN. Well, that was one of the factors that was very closely looked at, obviously, and MCA, as you may imagine, wants to sell Yosemite Park and Curry Company without retaining any liabilities. That was principally where they were coming from in the negotiations. The Park Foundation agreed to that, having agreed to it only after they did their own due diligence and went out to ascertain what the scope of the liability might be. We are talking about a liability that two independent environmental groups from private enterprise estimated to be \$8 million over 15 years. You are talking about revenues over that 15 years of \$2 billion.

This is not a big problem in those scales. It is a big problem, however, for the notion that the Government, as part of this transaction, would assume the liabilities of a concessioner. It is a very, very difficult notion to live with, and I do not think certainly that we would look favorably on that. Even though the amount of money involved might be not that much, the idea that we, the Government, would pick up environmental liabilities is a very new concept.

Mr. VENTO. Well, Mr. Chairman, if you would yield.

Mr. MILLER. Was there any notion that you were going to proceed against MCA at that time?

Mr. HANSLIN. Well, we talk about this liability. There is a liability to clean up the gas tank just like any company in the country that has a gas tank, has to clean it up. Yosemite Park and Curry Company, the existing concessioner, is doing that now. They are spending several million dollars a year to do it. They have a program in place to achieve it. The money is budgeted to do it. It is all doable within the revenues of the company. There is no thought anywhere suggesting that somehow the revenues from this concession are not going to be there to take care of this problem.

So, the answer is no, we are not suing MCA. There is not a problem right now.

Mr. MILLER. Well, I appreciate that, but at some point somebody I assume on your side of the negotiating table, whether it was the Foundation or the Park Service or the Secretary's office, had to quantify that in terms of arriving at what was a fair buy-out price of the MCA interest. At one point, MCA was saying it is \$100 million.

Mr. HANSLIN. I think that is true. The retention of liabilities as part of the negotiation was certainly taken into account. I wasn't involved with the due diligence that the Park Foundation did. I was not involved in all the negotiations. Certainly that was an element of it, and certainly the Secretary and the Director and the Park Foundation think that they got a good deal on that price taking into account this environmental liability.

Mr. MILLER. But the question is, did they?

Mr. HANSLIN. Well—

Mr. MILLER. You quantify the liability for the purposes of the buy-out one way and you quantify the liability differently for the purposes of the bids. I go back to the notion of whether or not we paid a premium for the desire to have unlimited liability at the other end of the arrangement. That is all. Money is money, and it is hard to come by for the Park Service. So, we just want to know.

I appreciate what the former Secretary thought, but that has not always matched up with the facts over the last 4 years. So, let's just start here. [Laughter.]

I do not know if that is the case because you are unable to tell me how anybody quantified this other than what the bidders did on their own to determine the amount of money they might be liable for if they won the contract. Where was the Government in this? You were representing the people on this issue in two negotiations, one with MCA and one for contract purposes.

Mr. HANSLIN. I would answer again the Government—and it was the Park Foundation and the Secretary and the Director—negotiated this price. When they did the due diligence, when they had the accountants, environmental experts, and technical people go out there, it was determined that the price was consistent with the responsibilities assumed. Now, you may say that that was not done thoroughly enough. Because I am not even privy to the documents, I cannot produce the quantification of that, but that was done and that was the judgment made.

Mr. MILLER. Mr. Vento.

Mr. VENTO. Well, I was just going to mention I think the real issue is whether, by virtue of setting the terms of the purchase agreement, you have then superimposed a limitation or a requirement on a prospective concessioner that's being granted. And the answer is yes because you included in that the assignment or reassignment of the liabilities. So, the Government is very much involved at least in setting the terms of that agreement which normally during recourse would go between two independent agents.

The other point is that in doing so, you obviously sharply limited the ability of a number of bidders to bid by virtue of that, by not setting a monetary amount on it, which is not quantifiable to the bidders. In fact, many of them, as I understand, capped liability at something like \$12.3 million, and yet apparently that was a major threshold issue, according to the information that I have read, that then precluded them from being considered in some instances for this even though the amount of return to the Government based on their preliminary numbers in the bid would have actually been higher.

So, in setting the purchase agreement, you in a sense also limited who would be able to apply because of the way you applied this in the bid process. So, at that particular point, I think that is where we find the premium issue that becomes involved here. That is the effect of what has taken place in terms of this key fact.

There is also, of course, the deal with the executives' liability issue, which has not been brought up at all here, the compensation issue. That certainly should have been something that was identifiable. Mr. Davis, did you want to briefly mention anything about it, the executive contracts, the contracts with individual executives, the MCA people?

Mr. DAVIS. Yes. Mr. Hanslin is familiar with that.

Mr. HANSLIN. What happened was that—this was not out of the norm—the principal executives of the Yosemite Park and Curry Company I think five or six of them were on 3- or 4-year contracts. The last time those were executed was right around the time of the transaction, and those contracts extend beyond the term. You can

call it a liability if you want, but what you have is the five or six executives of the Yosemite Park and Curry Company have got contracts which are in place. When the new company buys the stock of that company, they are buying the services of the corporation. You could call by the same terms the union contract which they have.

Mr. VENTO. They bought the union contract?

Mr. HANSLIN. Yes, sir. The union contract they executed about a year ago and it extends beyond that. Now, you could call that a liability too.

Mr. VENTO. That is the way it is referenced in the papers I have here.

Mr. HANSLIN. Right. Well, I am not sure that the term "liability" is correct. What is correct is that the new company has to buy Yosemite Park and Curry Company lock, stock and barrel, which includes its existing contractual obligations, which are some executive contracts. It is a union contract. They have pension plans. They have insurance. They have insurance contracts. They have all kinds of contracts, and they are not liabilities, and I do not believe they are anything out of the usual.

Mr. VENTO. Well, I would just quote the GAO, who said "the new concessioner will acquire two contingent liabilities. One contingent liability is the undetermined cost of cleaning up environmental protection superfund sites, and the second is the contingent liability for potential payments to certain Curry Company executives." They do not mention the union contract or the labor contract in there.

Mr. HANSLIN. If the new company comes in—and there is nothing unusual about this—and says they want to dismiss the top five or six executives at YPC at day one, we want you out of here, then those people have employment contracts, and they have to be paid under the terms of those contracts.

Mr. VENTO. We ran into this when I was doing some work on the S&Ls that had failed. It looked like they always had maintained the agreements with the executives, but somehow did not do anything for the pink collar workers I might say.

Mr. HANSLIN. In this case the union contract is in the same category.

Mr. VENTO. I see.

Mr. MILLER. Mr. Lehman.

Mr. LEHMAN. Just on this, you have examined those executive contracts?

Mr. HANSLIN. The Government does not have those contracts.

Mr. LEHMAN. You had nothing to do with them?

Mr. HANSLIN. No, we had nothing to do with them.

Mr. LEHMAN. But the purchaser would have to know what was in those contracts so they would know what they were buying. Right?

Mr. HANSLIN. Well, the purchaser is fully aware of those contracts and had full access to them. The bidders, as part of the due diligence, went and saw every scrap of paper the company has, including all of its contracts, all of its accounts, all of its liabilities. They did everything. They had full access to the books of the company to look at those.

Mr. LEHMAN. Let me just ask you this about a point I asked earlier. Notwithstanding the opinion of the GAO, was the decision to reimburse or pay the Foundation the \$500,000 your advice to the Secretary?

Mr. HANSLIN. I think the Office of the Solicitor per se does not think the GAO was correct in its legal conclusion.

Mr. LEHMAN. So, they provided the Secretary with that opinion, and he acted on that?

Mr. HANSLIN. Well, I think that was part of the consideration.

Mr. LEHMAN. I know. I just want to know if they, in fact, offered him that opinion or if there was no opinion or if their opinion was to the contrary.

Mr. HANSLIN. No. I think it is fair to say that the Office of the Solicitor did not agree with the views of the GAO, that the Foundation was not authorized to go forward with this.

Mr. LEHMAN. And you said that to the Secretary? Did the Secretary ask for your opinion?

Mr. HANSLIN. The reason I am hesitating, I was not personally there when the Secretary dealt with that, but let me put it differently.

The letter that went to Congressman Dingell in response to the GAO report, which is signed by the Secretary, was surnamed by the Office of the Solicitor, approved for legal sufficiency. It said several things, but one is that we do not agree with that. It is a very technical concern that was raised. We don't agree with it.

But in any event, the Park Foundation is a pass-through here. And this is one of the reasons that we went the way we did. The GAO said, gee, the Park Foundation could not have done this in its own right, but the Secretary could have done it in his own right. The Foundation was just helping the Secretary out. So, we were almost looking at it as a no-harm/no-foul kind of rule.

Mr. LEHMAN. Could you submit that letter for the record here?

Mr. HANSLIN. Certainly.

[The letter follows:]



THE SECRETARY OF THE INTERIOR
WASHINGTON

JAN 8 1992

Honorable John D. Dingell
Chairman, Subcommittee on Oversight
and Investigations
Committee on Energy and Resources
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your October 8, 1992, letter to me and Administrator Reilly of the Environmental Protection Agency concerning the sale of the Yosemite Park and Curry Company (YPC). Administrator Reilly will be responding to your letter separately.

Enclosed is a memorandum from the Director of the National Park Service (NPS) which comments on the GAO report which you referenced and responds to your specific questions. The memorandum indicates that the Superfund issue is not financially significant in the context of Yosemite concession operations and has been appropriately provided for in the YPC transaction. No liabilities are assumed by the United States. We expect that Administrator Reilly will discuss this matter further in his response to your letter.

More importantly, however, is the fact that the Interior Department and the GAO are in agreement that the YPC transaction is lawful in and of itself, the only outstanding issue being the proper interpretation of the technical authorities of the National Park Foundation. While it may be appropriate for the National Park Foundation to take steps to clarify its authority in light of the GAO report (for example, through legislative changes to its charter), this issue should not affect the completion of the YPC transaction. Further, as discussed in the enclosed memorandum, the National Park Foundation, as planned, will soon cease to be involved in the transaction, and, the special situation which led to the YPC transaction, unique in NPS experience in that it called for the execution of a concession purchase agreement by a pass-through organization (the role fulfilled by the National Park Foundation) in advance of NPS selection of a new concessioner, is not likely to occur again.

I also point out that our further review of the YPC transaction and careful study of the GAO report confirm our view that the transaction is in the best interests of the United States and will prove to be a very significant step in the reform of the NPS Concession Management Program and a milestone in the preservation of Yosemite National Park. In this regard, and as described further in the enclosed memorandum, the YPC transaction was approved only after discussion at two congressional hearings and only after widespread public scrutiny of the project. I am pleased to say that in the course of this public scrutiny the transaction has received widespread, bi-partisan support as an innovative and effective effort to assist in the preservation of Yosemite for the benefit of future generations.

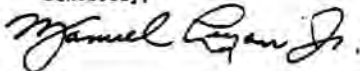
Honorable John D. Dingell

2

I intend to proceed with the YPC transaction as planned, and will submit the proposed new Yosemite concession contract to the Congress for a 60-day review period soon. Shortly thereafter, the Foundation will assign the purchase agreement to the selected new concessioner. The new concessioner will complete the purchase on September 29, 1993. As of October 1, 1993, accordingly, Yosemite National Park will have in place a new concession contract and concessioner directed to the preservation of the park and appropriate care of its visitors in a manner consistent with our legislative mandates and stewardship responsibilities for this remarkable natural resource.

Your interest in this matter is appreciated.

Sincerely,



Enclosure

cc: Honorable Thomas J. Bliley, Jr.
Ranking Minority Member

Honorable Charles A. Bowsher
Comptroller General, General Accounting Office

Honorable George Miller
Chairman, Committee on
Interior and Insular Affairs

Honorable Don Young
Ranking Minority Member
Committee on Interior and
Insular Affairs

Honorable Mike Synar
Chairman, Subcommittee on
Environment, Energy and
Natural Resources
Committee on Government Operations

Honorable William K. Reilly
Administrator
Environmental Protection Agency



IN REPLY REFER TO:

United States Department of the Interior

NATIONAL PARK SERVICE
P.O. Box 37127
Washington, D.C. 20013-7127



CJ823 (680)

DEC 2 1992

Memorandum

To: The Secretary

Through: Assistant Secretary for Fish and Wildlife and Parks *James E. Clump*

From: Director, National Park Service *John*

Subject: Yosemite Park and Curry Company Transaction

This responds to your request that we review and comment upon the findings of the General Accounting Office's September 10, 1992, report entitled "Issues Involved in the Sale of the Yosemite National Park Concessioner" (GAO/RCED-92-232). You have also asked us to discuss the questions raised by Chairman Dingell in his related October 8, 1992, letter to you and Environmental Protection Agency Administrator Reilly.

Background. On January 8, 1991, the National Park Foundation (Foundation) and MCA, Inc. (MCA) entered into an agreement "in principle" under which the Foundation, in what was and is intended to be a pass-through capacity, agreed to purchase from MCA 100 percent of the stock of the Yosemite Park and Curry Company (YPC), MCA's corporate subsidiary which operates commercial visitor services at Yosemite National Park through a concession contract with the National Park Service (NPS). This agreement was approved by you "in concept," with the understanding that possible final approval would take place after negotiation of a definitive purchase agreement setting forth full details of the transaction.

In general terms, the YPC transaction calls for MCA to sell on September 29, 1993, by means of an acquisition merger, 100 percent of the stock of YPC to the new concessioner for Yosemite National Park as selected by NPS. The purchase price effectively will be \$61.5 million and the new concessioner may choose to accept MCA financing of the purchase price at 8.5 percent interest for 15 years. At some point in advance of this date the new concessioner will have accepted the assignment of the purchase agreement from the Foundation and the Foundation will have no further role in the transaction. As of October 1, 1993, a new 15 year concession contract will be in place for Yosemite. The new contract, among other matters, will extinguish the existing possessory interest in

Yosemite's concession facilities and will require the new concessioner to dedicate portions of its revenues to the improvement of Yosemite concession facilities, including the removal of buildings as appropriate to protect the resources of the park.

The YPC transaction is the key to implementation of this favorable concession contract. In addition, but of extreme importance to Yosemite, the YPC transaction was also the key for the fact that the sale of the Yosemite Park and Curry Company is now by means of a public, competitive process rather than through a private, closed transaction as contemplated by MCA prior to the Foundation's involvement in the matter.

The YPC transaction was the subject of a January 9, 1991, oversight hearing before the House Interior and Insular Affairs Committee, Subcommittee on National Parks and Public Lands, and a February 21, 1991, oversight hearing before the Senate Committee on Energy and Natural Resources, Subcommittee on Public Lands, National Parks and Forests. At these hearings, the terms of the agreement were discussed in detail, including related financial considerations and the pass-through role of the Foundation in the transaction. We believe it is fair to say that the response of both subcommittees was favorable. Both subcommittees subsequently have been briefed informally on the progress of the transaction and we note that the final new Yosemite concession contract will not be executed until after the expiration of a 60-day congressional review period.

After the January 9, 1991, agreement in principle was reached, the Foundation and MCA proceeded to negotiate the terms of the definitive purchase agreement with our participation. This led to the execution and approval of the final agreement on September 20, 1991. As you know, on the basis of this final agreement, we are presently in the process of selecting a new concessioner for Yosemite through a public solicitation process. The initial solicitation was issued on April 6, 1992, and final offers from a number of prospective concessioners were received on November 16, 1992. We expect to award the contract in the near future, subject to the required congressional 60-day waiting period before a final contract is executed. Under these procedures, the new concessioner selected by NPS will accept from the Foundation the assignment of its agreement to purchase YPC and the Foundation's pass-through role will be completed. As of this writing, the transaction is on schedule and we expect to complete it in accordance with its terms in time to have the new concessioner in place on October 1, 1993, the expiration date of YPC's current concession contract.

Comments. We find the GAO report to contain a thorough description of the YPC transaction. However, we do not agree with the report's conclusion that the Foundation lacked legal authority to participate in it. A full discussion of the Foundation's legal views is contained in a December 13, 1991, memorandum of law provided to GAO by the firm of Silverstein and Mullens, counsel to the Foundation (copy attached). Although attorneys certainly may

reasonably disagrees on the issue, we continue to consider that the Foundation's participation was within its authority. In this regard, the GAO report focuses on the fact that the Foundation's statutory charter generally describes its authorized purpose as the receipt of gifts for the benefit of the National Park System and concludes that the YPC transaction is not a gift within this meaning. The Foundation's legal position focuses on the fact that the Foundation's statutory charter authorizes it to accept gifts, devises and bequests "for the benefit of or in connection with, the NPS, its activities or its services" and describes the transaction as the "economic equivalent of a gift of encumbered property" which the Foundation is specifically authorized by statute to accept.

We share this view and particularly consider that the transaction is tantamount to a gift in that the transaction could have been structured as the literal gift of an encumbered interest in property without any change in the underlying economics, and, also, on the fact that organizations such as the Foundation are generally authorized to undertake activities that are "directly related" to the performance of authorized powers even though not expressly described. In this regard, the Foundation is authorized to "enter into contracts, to execute instruments, and generally to do any and all lawful acts necessary or appropriate to its purposes."

In any event and regardless of which legal interpretation may be the most sound, we note that the role of the Foundation in this matter is pass-through, that is, it is acting as a "straw-man" in the transaction and the purchase agreement is to be assigned to the new concessioner to be selected by NPS. The Foundation's participation in the transaction, accordingly, is not substantive and will soon be terminated.

Moreover, it is unlikely that the Foundation will need to participate in a similar transaction in the future. The circumstances of the Yosemite matter were unique in our experience. As fully discussed at congressional hearings and in the press, there existed in late 1990 a compelling need stemming from the multi-billion dollar corporate acquisition of MCA to conclude a firm agreement for the sale of the Yosemite Park and Curry Company in advance of the ability of NPS to select a purchaser through a public, competitive solicitation process. The Foundation acted as the "straw-man" signatory so that a binding purchase agreement could be executed in advance of the selection of a new concessioner. Without the participation of the Foundation, the Yosemite Park and Curry Company may well have been privately sold to the possible detriment of all concerned. However, although we consider for these reasons that the Foundation's participation in the transaction was clearly in the public interest, we do not have any reason to consider that similar circumstances are likely to occur in the future. The issue of the Foundation's legal authority, therefore, is not a matter of prospective concern.

Specific Questions. Our responses to Chairman Dingell's specific questions in regard to the YPC transaction are as follows:

Superfund Site.

1. What is the role of the Yosemite Park and Curry Company in regard to the Superfund site in Fresno, California?

YPC is one of a number of entities which have a small potential liability for the costs associated with the cleanup of the Purity Oil Sales Superfund site in Fresno, California, because of contamination due to reprocessing of used motor oil at the site. It is our present understanding based on discussions with EPA that EPA estimates that YPC's potential pro-rata responsibility for the site is only .24 percent of both air and soils cleanup and that the dollar amount of this liability is estimated to be less than \$200,000. We expect EPA to provide full details in its response to Chairman Dingell as we have no independent information as to these estimates.

2. Why is the Superfund site a part of the contract and is the Yosemite Park and Curry Company relieved of any liability as a result of the YPC transaction?

The Superfund site is not a part of the current or proposed Yosemite concession contract. Any liability YPC may have with respect to the site (the site is not located within Yosemite) arises under Federal environmental law, not the Yosemite concession contract. The new Yosemite concessioner, however, is to acquire the Yosemite Park and Curry Company by merger. Any Superfund liabilities which YPC may have will remain, except that MCA as part of the transaction has agreed to be liable for up to \$200,000 of any cleanup costs. YPC is not relieved of any Superfund liabilities as a result of the transaction.

3. Does the United States assume any liability of the Yosemite Park and Curry Company?

No. The new concessioner and/or MCA remain fully responsible for any liabilities they may have for the Superfund site.

4. What will be the liability of the new concessioner with regard to the Superfund site?

The new concessioner will assume the liability of the Yosemite Park and Curry Company, subject to MCA's \$200,000 obligation and other specific terms of the purchase agreement.

Foundation's Authority.

1. What is the basis of the disagreement between GAO and the Foundation as to the legal authority of the Foundation to participate in the YPC transaction?

The basic positions of the GAO and the Foundation are summarized above. The attached correspondence provides the full position of the Foundation. We emphasize that the GAO Report, while expressing technical concerns about the participation of the Foundation, fully supports the authority of the YPC transaction in substance.

2. Was the Foundation acting on behalf of the Department of the Interior with respect to the YPC transaction?

The Foundation was requested by NPS to assist it in the resolution of the problems presented by the proposed private sale of YPC. It acted in cooperation with us to achieve this purpose but we are not legally responsible for its obligations. It has independent authority to enter into contracts and generally to do any and all lawful acts necessary or appropriate to its purposes.

3. If the Foundation lacked legal authority to participate in the YPC transaction, is the agreement valid?

For the reasons discussed above and in the attached correspondence, the Foundation and we consider that it has adequate legal authority to participate in the YPC transaction and that, accordingly, the agreement is valid. Although it could be accomplished, no useful purpose would be achieved by making changes to the transaction in order to eliminate the participation of the Foundation and thereby obviate the technical concerns of GAO. Concomitantly, we note that the GAO report itself reaches the conclusion that the Foundation's involvement in the transaction was not in fact necessary to what it considers to be an otherwise lawful transaction. Regardless of which view of the Foundation's legal authority is more sound, we believe it to be in the public interest to apply a "no harm - no foul" rule to this matter and proceed to final implementation of this important transaction which is manifestly of great benefit to the United States generally and Yosemite National Park in particular.

We will be pleased to provide any more information in regard to this matter that you may request.

Attachment

MEMORANDUM

TO: Alan R. Kasdan, Esq. (GAO)

DATE: December 13, 1991

SUBJECT: Corporate Authority of the National Park Foundation

As we discussed, you have been reviewing, on behalf of the United States General Accounting Office (GAO), the documents related to the transaction between MCA INC. (MCA) and the National Park Foundation (NPF) concerning the Yosemite Park and Curry Co. (YPC), a wholly-owned subsidiary of MCA. You have questioned whether the NPF has the corporate authority to engage in the proposed transaction. For the reasons set forth below, we believe it is within the NPF's authority to carry out the transaction.

A. Background.

Before addressing the specific question of the NPF's corporate authority, we think a description of the circumstances surrounding the proposed transaction will help put the question in context.

The National Park Service (NPS) has decided, as a matter of policy, that it is in the best interests of the United States to reform the arrangements pursuant to which concessioners provide services in the national parks. Under most existing concession contracts, concessioners have a preferential right of renewal. If, notwithstanding the preferential right, a different concessioner is selected at the end of their concession contract, they are entitled to be paid for their "possessory interest" in the improvements made during the term of the contract.¹ One of the major elements of the reform desired by the NPS is to change the method of calculating the value of possessory interests from the current "sound value" method to one based on book value. The NPS also would like to promote competition in the awarding of concession contracts.

More particularly, the NPS's desire to change the concession arrangement in Yosemite National Park was increased last year when MCA (and therefore YPC) was acquired by the Japanese firm of

¹ The possessory interest to which the concessioner is entitled is an unusual concept. Legal title to improvements in the park rests with the United States. However, the concessioner is entitled (statutorily and pursuant to its concession contract) to be paid the lesser of the "sound value" or the fair market value of the improvements at the time its possessory interest is transferred to a new concessioner. The concessioner would be entitled to the same compensation if the possessory interest were taken for public use. See 16 U.S.C.A. § 20e (1974).

Matsushita Industrial Electric Co., Ltd. YPC operates certain concessions in Yosemite under a 30-year concession contract entered into in 1963. Under this contract, YPC has a preferential right of renewal and, if its concession contract is not renewed, YPC has the right to be compensated by the new concessioner for its possessory interest in certain improvements in Yosemite.² YPC's right of first refusal, together with the obligation of any successor concessioner to pay YPC the value of its possessory interest (and the difficulty of estimating the amount of that obligation) would effectively preclude any potentially interested bidder from seeking a new concession contract for the Yosemite concessions.

To facilitate the termination of YPC's possessory interest and to promote competition for the Yosemite concessions, the NPS has agreed to act as a middleman in the transfer of YPC. Under the terms of the agreements you are reviewing, the NPS is obligated to acquire YPC on September 29, 1993 (the day before YPC's concession contract expires) by means of a merger of YPC with and into a new corporation to be formed by the NPS. In consideration for the merger, the new corporation would issue a 15-year nonrecourse note to MCA.³ As part of the agreement, YPC has agreed not to assert its preferential right of renewal. Moreover, YPC's possessory interest would effectively be eliminated over the same 15-year period over which the note is required to be paid. In connection with the transaction, MCA has

² Although 16 U.S.C.A. § 20e provides in general that the value of a possessory interest is the lesser of its "sound value" or fair market value, YPC's concession contract, which was entered into prior to adoption of the statute, provides that YPC is entitled to be paid the sound value of the possessory interest (even if such amount exceeds fair market value). The value of YPC's possessory interest is very difficult to estimate, because a determination of the "sound value" of the possessory interest would require an engineering survey of each improvement and an estimate of each improvement's replacement cost. However, calculations made by the NPS based on estimated cash flows from the concession operations indicate the value is substantially in excess of the amount of the nonrecourse note that would be issued in connection with the proposed transaction, as described below.

³ Pursuant to the merger agreement, YPC will merge into the acquisition subsidiary which will be the "surviving corporation." The surviving corporation will be the obligor under the note, and its obligations thereunder will be secured only by its assets. Because the acquisition subsidiary will be a new corporation formed solely to effect the merger, the assets and liabilities of the surviving corporation will be the same as those of YPC immediately prior to the merger (except for the new concession contract). Therefore, to avoid needless complexity, we have loosely referred in this memorandum to the surviving corporation as YPC or the successor concessioner.

-3-

contributed \$2 million to the NPF and has agreed to contribute an additional \$2 million in each of 1992 and 1993.⁴

As discussed below, the NPF intends to assign its rights and delegate its obligations under the merger agreement to the successful bidder for the new concession contract. In no event will the NPF be required to invest its funds in the proposed transaction.

B. Corporate Authority of the NPF.

The NPF was established on December 18, 1967, by an Act of Congress (Act) and was authorized to accept gifts, devises and bequests "for the benefit of or in connection with, the [NPS], its activities or its services".⁵ The legislative history of the Act makes it clear that one of the primary purposes of creating the NPF was to provide more flexibility to carry out the mission of assisting the NPS than was enjoyed by the NPF's predecessor, the National Park Trust Fund.⁶ The importance of this added flexibility has been officially recognized by Congress. For example, the legislative history of the National Park System Visitor Facilities Fund Act,⁷ which temporarily authorized the NPF to assist in rehabilitating a large number of small structures located within the national parks, stated that:

The (NPF) was established by Public Law 90-209 (1967) to assist the (NPS) by undertaking functions that are most appropriately accomplished by a private tax-exempt

⁴ The \$6 million contribution is very significant to the NPF. To place this contribution in perspective, the total amount spent on projects by the NPF during 1990 was \$2 million.

⁵ P.L. 90-209, 81 Stat. 656 (codified at 16 U.S.C.A. §§ 19a to 19n (1974)).

⁶ See, e.g., H.R. Rep. No. 623, 90th Cong., 1st Sess. 2-4 (1967).

⁷ P.L. 97-433, 96 Stat. 2277 (codified at 16 U.S.C.A. §§ 1999 et seq. (Suppl. 1991)). It should not be inferred from P.L. 97-433 that similar legislative action is required to authorize the proposed transaction involving YPC. P.L. 97-433 authorized the NPF to spend money appropriated to the NPS to carry out projects authorized under the statute and conferred upon the NPF the responsibility for managing the construction activities related to such projects. The NPF's activities in this regard were clearly beyond the scope of its charter and required Congressional approval. This case involves no government appropriation, and the NPF will not be playing the "quasi-executive-branch" role it played under the 1962 legislation. On the contrary, as discussed below, the NPF will simply exercise its statutory powers to facilitate certain transfers for the benefit of the NPS and to secure a contribution from MCA.

organization and as such is in a unique position to provide the flexibility of private and public expertise to accomplish the needed work. The [NPF] is also able to serve as a conduit for the merger of public and private finances to meet the objectives of this legislation.⁸

The proposed transaction involving YPC has the full backing of the NPS and, while unusual, is precisely the kind of opportunity to benefit the national parks that requires the added flexibility of the NPF.

1. The NPF is facilitating the receipt of a gift and the transfer of certain economic benefits to the NPS by exercising its authority to execute contracts. Section 6 of the Act⁹ authorizes the NPF to "enter into contracts, to execute instruments, and generally to do any and all lawful acts necessary or appropriate to its purposes." It is important to recognize here that the NPF has no present intention of acquiring the stock of YPC.¹⁰ The NPS will issue a statement of requirements (SOR) early next year seeking bids on a new concession contract for Yosemite to begin October 1, 1993. The SOR will require bidders to agree to step into the shoes of the NPF with respect to the acquisition of YPC. The successful bidder will acquire YPC and YPC will issue the note described above.

Therefore, as contemplated, the NPF would be a mere straw man that serves the purposes of eliminating the preferential right and the uncertainty regarding YPC's possessory interest, which would otherwise discourage bidding. The former objective has already been accomplished. Pursuant to Section 4.01(f) of the merger agreement, YPC has waived its preferential right. Accomplishment of the latter objective is more complex. There

⁸ H.R. Rep. No. 97-953, reprinted at 1982 U.S. Code Cong. and Adm. News at 3839.

⁹ 16 U.S.C.A. § 19j (1974).

¹⁰ Because the NPF will not acquire the stock of YPC, the limitation contained in Section 4 of the Act (codified at 16 U.S.C.A. § 19h), which restricts the NPF's investments to those that may be made by a trust company in the District of Columbia, does not come into play. This would be true even if the NPF carried out the proposed transaction on its own behalf, since the NPF would not be required to invest any of its funds. As discussed below, the proper characterization of an actual acquisition of YPC by the NPF under the terms of the merger agreement would be as a gift of encumbered property. Therefore, although an actual purchase of YPC by the NPF might very well be within its powers as limited by Section 4 of the Act (see D.C. Code § 26-409), it is not necessary for the NPF to make that argument here.

are several benefits related to the possessory interest that will inure to the NPS.

First, the uncertainty regarding the amount of the possessory interest, which could have dissuaded prospective concessioners from bidding on the new concession contract, has been eliminated. Under paragraph 8 of the supplement to the existing concession contract between the NPS and YPC,¹¹ YPC has agreed to relinquish its possessory interest as of the closing under the merger agreement.¹² Therefore, in lieu of paying an uncertain amount for YPC's possessory interest, the successor concessioner will pay a sum certain (approximately \$61.5 million) for all of the assets of YPC.

Second, the NPS believes, based on its calculations, that the value of YPC's possessory interest alone is worth more than the \$61.5 million price at which MCA has agreed to sell YPC to the NPF. The difference between the true value of the possessory interest and the agreed purchase price represents an additional transfer of an economic benefit from MCA (ultimately, as the sole shareholder of YPC) to the NPF. By assigning its contract rights to the successor concessioner, the NPF will effectively transfer this economic benefit to the NPS. This is true because of the method for compensating concessioners. The SOR to be issued will permit the successor concessioner to earn a profit after taking into account its payment obligations under the note. The remainder of the revenue will accrue to the NPS. Therefore, the reduction in the amount paid by the successor concessioner increases the NPS's share of concession revenues.

A third benefit to the NPS relating to YPC's possessory interest is the extinguishment of such possessory interest. As noted above, YPC will relinquish its possessory interest as of the closing under the merger agreement. Although the possessory interest will continue to exist as an asset of the successor concessioner solely as security for the successor concessioner's obligation to make payments under the note, at the end of the 15-year term of the note, the possessory interest will have been completely extinguished. This will result in the vesting of all right, title and interest to all improvements in Yosemite existing as of September 30, 1993, in the United States government.¹³ The NPF views this result as the transfer of an additional economic benefit to the NPS brought about by the NPF's role in the proposed transaction.

¹¹ A copy of the supplement is attached to the merger agreement.

¹² 16 U.S.C.A. § 20e authorizes such a relinquishment.

¹³ The terms of the successor concessioner's possessory interest in improvements constructed after September 30, 1993, will be governed by the new concession contract, which presumably will base the possessory interest on book value.

In summary, as a result of the proposed transaction, the NPS will achieve the reforms it seeks (and will obtain a financial benefit from the below-market price and the extinguishment of YPC's possessory interest), and the NPF will receive a \$6 million contribution. The signing of the merger agreement (and any necessary instruments of assignment to be signed in the future) simply represent the exercise by the NPF of its power under Section 6 of the Act in furtherance of its purpose.¹⁴

2. Even if the NPF were to acquire YPC on its own behalf, it would not be beyond its powers. Even the unlikely event of the NPF acquiring YPC on its own behalf would not be an ultra vires act.¹⁵ Two separate arguments support this conclusion.

¹⁴ This should be distinguished from the case recently considered by the GAO involving the Federal Agricultural Mortgage Corporation (Farmer Mac). In that case, Farmer Mac argued that it was authorized to issue debt and use the proceeds to acquire certain mortgage-backed securities. The GAO concluded that this undertaking would be outside the statutory authority granted to Farmer Mac pursuant to 12 U.S.C.A. § 2279aa-1(b) (1989), which essentially authorizes Farmer Mac to act only as a guarantor.

In contrast, the NPF is not proposing to engage in entirely new activities, nor does it argue that Section 6 of the Act is an independent grant of authority. The NPF merely seeks to exercise its Section 6 authority in furtherance of its statutory purpose of facilitating gifts for the benefit of the NPS.

¹⁵ We should note here that, notwithstanding present expectations, it is possible, under the terms of the merger agreement, that the NPF would be unable to assign its rights and delegate its obligations under the documents to a successor bidder, and would be required to go forward with the acquisition of YPC. This possibility is remote, but it could occur if there were no successful bidder when the NPS issues its SOR. This is unlikely, since the NPS would probably change the terms of the SOR if there were no interest. However, if no acceptable bidder materialized, YPC would most likely hold over as the concessioner under an arrangement negotiated with the NPS, and the NPF would be obligated to go through with the merger. Once again, the NPF is free to assign its rights and delegate its obligations with respect to the YPC acquisition and would most likely do so in this case.

Instead of assigning its rights to the successful bidder, the NPF would most likely assign its rights to a charitable foundation which would own YPC and apply any profits for the benefit of Yosemite. The new foundation would either be a temporary owner of YPC until a new concessioner was found or, alternatively, might itself become the new concessioner. Either way, the NPF would not own the stock of YPC even for an instant. Again, the NPF would simply have exercised its Section 6 powers

first, the NPF has the power to accept gifts of encumbered property. As discussed below, if the NPF acquired YPC in the proposed transaction it would essentially be receiving a gift of encumbered property. Second, the record shows that the NPF has the power to acquire land and convey it to the United States. The proposed transaction is in many ways analogous to such a land transfer.

Section 3 of the Act¹⁶ provides that the NPF may accept a gift "even though it is encumbered, restricted, or subject to beneficial interests of private persons if any current or future interest therein is for the benefit of the [NPS], its activities, or its services." If the NPF were to acquire the stock of YPC in the proposed transaction, it would be the economic equivalent of a gift of encumbered property. At the end of the transaction, the NPF, without having invested any of its own funds, would own the stock of YPC. YPC would be obligated to make payments to MCA pursuant to the terms of the note. YPC's obligation to make such payments would be secured only by its own assets; the note is entirely without recourse to the NPF. This is the economic equivalent of a gift to the NPF of the YPC stock subject to an encumbrance.¹⁷ The fact that the transaction is structured as a merger for business and tax reasons should not obscure this basic economic truth.

Moreover, ownership by the NPF of the stock of YPC would not violate the proscription contained in Section 4 of the Act¹⁸ against engaging in any business. The legislative history of the Act sheds some light on this question.¹⁹ Under the Act, as

to obtain a \$6 million contribution and to assist the NPS in reforming the concession arrangement in Yosemite.

¹⁶ 16 U.S.C.A. § 19g (1974).

¹⁷ An example may help illustrate this equivalence. If (1) YPC borrowed \$61.5 million from a bank (on a non-recourse basis), (2) YPC paid a dividend of \$61.5 million to MCA, and (3) MCA gave the stock of YPC to the NPF, the result would be the same as the result of the proposed transaction, except that the non-recourse note would be payable to the third-party bank instead of to MCA. In reality, of course, because, among other reasons, the debt is non-recourse, a commercial bank or other third-party lender would be unlikely to make such a loan.

¹⁸ 16 U.S.C.A. § 19h (1974).

¹⁹ See, e.g., Hearings Before the Committee on Interior and Insular Affairs, Subcommittee on National Parks and Recreation, to Establish the National Park Foundation, 90th Cong., 1st Sess. 93 (1967), and Hearings Before the Subcommittee on Parks and Recreation of the Committee on Interior and Insular Affairs, United States Senate, 90th Cong., 1st Sess. 10-12 (1967), wherein

clarified by its legislative history, the NPF is authorized to accept a gift of a going concern so long as the NPF itself does not operate it. Mere ownership of stock is not "engag[ing] in business." It would be a relatively simple matter for the NPF to hold the stock of YPC without conducting YPC's day-to-day operations.

A second argument supporting the NPF's belief that, although it does not plan to do so, it would have the power to invest its own funds in this transaction.²⁰ The Committee Report accompanying the legislation creating the NPF²¹ provides that the NPF

will be authorized to act not only for the purpose of administering an endowment, so to speak, for the benefit of the [NPS] but also for the purpose of acquiring property which is itself to be turned over to the Government for administration as a part of an authorized unit of the national park system. It may thus, in some circumstances, be in a position to acquire property in advance of a price rise - perhaps by donation, perhaps by buying it as an investment with its own funds - and make it available to the Government or liquidate it at a later date as conditions then dictate.

This legislative history makes it clear that the NPF, in addition to accepting donations, may acquire property with its own funds for the benefit of the NPS. Given this conclusion, the transaction under consideration should *a fortiori* be permissible under the NPF's charter.

C. Conclusion.

For the reasons set forth above, we believe the NPF has the corporate authority to engage in the proposed transaction described above. We hope this memorandum has been helpful to you and, of course, will be happy to answer any questions you may have.

James C. Dians
Jerry J. McCoy

George B. Hartzog, Jr., then director of the NPS, states his view that the NPF would have the power to accept a gift of a going business and permit the donor to operate it (or hire a manager to operate it) and receive income from it for a period of years.

²⁰ As noted above, the NPF does not believe that Section 4 of the Act (codified at 16 U.S.C.A. § 19h) would prohibit such an investment.

²¹ H.R. Rep. No. 623, 90th Cong., 1st Sess. 3.

Mr. LEHMAN. Thank you very much.

Mr. VENTO. One other point, Mr. Chairman—and I think it is significant—is that this agreement, or at least the outlines of the agreement or the purchase, was accomplished early in 1991. The contingent liabilities for the environmental fund I guess we understand that, but the so-called contingent liabilities for other employment benefits and programs is ongoing. That has been somewhat dynamic.

Have you monitored any significant changes in terms of those types of agreements? During this interim for a couple of years, new agreements could be entered into. Were there extraordinary wage increases given to the pink collar workers, Mr. Hanslin?

Mr. HANSLIN. No. Let me tell you several things in response to that question.

One is that the executive contracts that you were talking about were executed by the YPC prior to the transactions that we entered into.

Mr. VENTO. What was the date of that?

Mr. HANSLIN. It was very shortly prior to that. It was like two or three days ahead—

Mr. MILLER. When was it though? The agreement was announced—

Mr. HANSLIN. The agreement was in a two-step part, Mr. Chairman. One, if I have the date correct, was January 7, 1991, which is when the term sheet was signed. That was just more or less an outline of the agreement. Then the final agreement was negotiated over the next six or seven months and not signed I think until September 22.

Mr. VENTO. Well, we had September. So, the extraordinary agreements in terms of compensation, sometimes known as golden parachutes, were entered into just shortly before that. Were you aware of the fact that they were extending the Government's—

Mr. HANSLIN. I do not believe the Government was aware of those before we signed the contract.

Mr. VENTO. You were not aware of it.

Mr. HANSLIN. Well, I cannot speak for the entire Government, Mr. Chairman.

Mr. VENTO. So, have you taken any action to, in fact, rectify that situation?

Mr. HANSLIN. The Government is not party to the contract in the first place. It is the Park Foundation. But what the agreement between MCA and the Park Foundation states is that—

Mr. VENTO. Obviously, I think I have made my point without again going through the reality of the Foundation arrangement. But I do not interpret it as an act of good faith in my judgment, whether or not the technicality was the Park Foundation or the Government. I am not looking for a scapegoat. I am just looking for the issue of bad faith, which I think is reflected in this and does represent, as I said, two sets of rules.

Mr. HANSLIN. I think we are making an assumption, and I do not know the answer to this. We are making an assumption that the executive contracts that were entered into were out of line. I do not know that for a fact.

But subsequent to our entering or the Foundation entering into an agreement—it is a little hard to control someone before you have an agreement with them. And this is the second part of your question. You asked what do we do in the meanwhile. The agreement with MCA and the Foundation requires YPC to do business in its usual course, and the Park Foundation, in fact, has two members on its board of directors. They cannot take any unusual or abnormal steps that would change the condition of the company. That is part of the contract now.

Mr. VENTO. But that is the contract after it was signed, but that did not deal with anything right before—

Mr. HANSLIN. Well, that is true. Until they signed the contract, they were under no obligation to us or to anybody.

Mr. VENTO. I don't think we should try to round out the edges of something which I think represents bad faith of one of the parties, and not the Government, in terms of what went on here.

Thank you, Mr. Chairman.

Mr. MILLER. Thank you very much for your time. Obviously, we reserve the right to ask additional questions when we see the contract and the attachments when they are forwarded to the Congress. We would appreciate your continued cooperation in response to those questions. Thank you very much.

The next panel will be made up of Mr. Donald S. Green, who is the executive director of the Yosemite Restoration Trust Services Corporation, and Mr. Randolph C. Read, who is the president of Yosemite Park Services, L.P. Welcome to the committee. Your full statements and supporting documents will be placed in the record in their entirety. Mr. Green, we will start with you and you proceed in the manner in which you are most comfortable.

Mr. GREEN. If I may, Mr. Miller, Mr. Richard Martyr is with me. He is the chairman of the board of the YRT Services Corporation that submitted the bid. I am the executive director of the YRT, the Yosemite Restoration Trust, and I serve as staff to him. So, I would rather have him speak first.

Mr. MILLER. However you want to proceed. Mr. Martyr, welcome.

PANEL CONSISTING OF RICHARD MARTYR, CHAIRMAN OF THE BOARD, YOSEMITE RESTORATION TRUST SERVICES CORP.; DONALD S. GREEN, EXECUTIVE DIRECTOR, YOSEMITE RESTORATION TRUST ON BEHALF OF YRT SERVICES CORP.; AND RANDOLPH C. READ, PRESIDENT, YOSEMITE PARK SERVICES, L.P., ACCOMPANIED BY WILLIAM O'BRIEN, KECH, MAHIN & CATE

STATEMENT OF RICHARD MARTYR

Mr. MARTYR. Thank you.

My name is Richard Martyr. I am chairman of the board of YRT Services Corporation. It is a for-profit corporation, and I presently serve as CEO of American Youth Hostels.

The YRT Services Corporation was established by the Yosemite Restoration Trust, a nonprofit group founded in 1990 to make sure the general management plan for Yosemite was implemented during the next concession contract.

The Services Corporation includes in its board of directors persons dedicated to Yosemite and the national parks, with a long history of service and experience in serving visitors. In addition to myself, our board includes Mr. Michael Glennie, president of Rockresorts; Frank Wells president of The Walt Disney Company; Tom Klutznick, former co-owner of the Aspen Ski Corporation; Stuart Cross and Robert Maynard, former CEO and COO of the Yosemite Park and Curry Company; Nancy Glaser, board member of the San Francisco Exploratorium; Jim Sano, former Yosemite Park district interpreter; Bernard Butcher, managing partner of Amsterdam Pacific Corporation; and Frank Boren, former president of the Nature Conservancy and member of the ARCO board.

Our investors include members of our board, the Bank of America, an investment fund, and several private foundations, most of whom are California-based. They are committed to earning a reasonable return on investment and returning to the park the maximum amount possible. Our proposal includes sharing profits with the Park Service.

With regard to fees and payments and implementation of the Yosemite management plan, based on Park Service calculations, our fee payment exceeded all other bids; the difference was 25 to 35 percent greater than the proposal selected, or \$16 million to \$20 million in present value terms. In terms of actual dollars received over the 15-year life of the contract, we estimate the difference at \$43 million.

My concern is that the firm now selected for the contract negotiation has proposed a low fee and that the proposed fee will be reduced every 4 years to offset the negative effect on concessioner profits from Park Service implementation of the general management plan.

The steps called for in the concession services plan include reducing merchandise sales outlets and lodging by 20 percent and having the concessioner bear the expense of relocating its headquarters and half of its 2,000 employees now residing in the heart of Yosemite Valley to new and more expensive housing outside the park.

It is these kinds of continuing park planning issues that are greatly affected by the choice of a concessioner. This decision must be a prudent one based on assessments of the nature of the firm, its background, and demonstrated commitment to the mission of the Park Service.

Profits are not the principal objective of our company in which the majority of investment is from foundations and socially responsible investment funds.

Our investors will cooperate fully with the Park Service in implementing the general management plan and providing the maximum resources to that end. We are committed to take every measure possible to avoid any future reduction in our proposed management fee, already 30 percent above that of the proposed concession awardee. We are committed to private financing for our employee housing, thereby freeing for other GMP purposes an additional \$50 million in scarce Park Service receipts for the concessioner. Combined, these measures will yield the Park Service up to \$100 million more than the offer now being negotiated.

Our bid also includes buying out the \$62 million MCA debt. Our proposal rids the Park Service of the onerous requirement that MCA appoint a replacement concessioner if the one selected by the Park Service fails to repay the debt.

In order to complete the contracting procedure to benefit the park, we urge the committees to require the Interior Department to request best and final offers from all responsive bidders, a normal step in bid evaluations and negotiations.

In view of the concerns raised by the Park Service and in the interest of helping serve the mission of the Park Service in Yosemite, we are making known at this point some parts of our best and final offer.

First, we will give up any claim on the right of preference in contract renewal otherwise available to the next concessioner.

Second, we will eliminate any requests for discussions concerning changes in operations resulting from the housing plan or concession services plan.

Third, we will attempt to eliminate the \$12 million limit on our proposed environmental expenditures.

With your permission, Mr. Chairman, I would like my colleague Don Green to continue with our remarks.

[Prepared statement of Mr. Martyr follows:]

Statement of Richard Martyr
Chairman and CEO, YRT Services Corporation

Concession Contract Evaluation Procedures for Yosemite National Park

Sub-committees of the Committee on Natural Resources,
U.S. House of Representatives
March 24, 1993

Mr. Miller, Mr. Vento, and members of the National Parks and Oversight Committees.

My name is Richard Martyr. I am Chairman of the Board of the YRT Services Corporation and presently serve as CEO of American Youth Hostels.

The YRT Services Corporation was established by the Yosemite Restoration Trust, a non profit group founded in 1990 to make sure the General Management Plan for Yosemite was implemented during the next concession contract.

The Services Corporation includes in its Board of Directors persons dedicated to Yosemite and the national parks, with a long history of service and experience in serving visitors. In addition to myself, a past Board member of the Yosemite Association, our board includes:

- Michael Glennie, President of Rockresorts
- Frank Wells, President of The Walt Disney Company
- Tom Klutznick, former co-owner of the Aspen Ski Corporation
- Stuart Cross and Robert Maynard, former CEO and COO of the Yosemite Park and Curry Company
- Nancy Glaser, Board member of the San Francisco Exploratorium
- Jim Sano, former Yosemite Park District Interpreter
- Bernard Butcher, Managing Partner, Amsterdam Pacific Corp
- Frank Boren, former Chairman of the Nature Conservancy and member of the ARCO Board

Our investors include members of our board, the Bank of America, an investment fund and several private foundations, most of whom are California-based. They are committed to providing an exceptional experience for visitors to Yosemite, earning a reasonable return on investment and returning to the park the maximum amount possible. Our proposal includes sharing profits with the Park Service and return to NPS of funds reserved for environmental clean up that exceed actual expenditures.

Fee Payments and Implementation of the Yosemite Management Plan

Based on Park Service calculations, our fee payment exceeded all other bids: the difference was 25-35% greater than the proposal selected, or \$16 to \$20 million in present value terms. In terms of actual dollars received over the 15-year life of the contract, we estimate the difference at \$43 million.

My concern is that the firm now selected for contract negotiation has proposed a low fee and that the fee proposed will be reduced every four years to offset the negative effect on concessioner profits from Park Service implementation of the General Management Plan (GMP).

(Steps called for include reducing merchandise sales outlets and lodging by 20%, thus reducing concessioner receipts; and having the concessioner bear the expense of relocating its headquarters and half of its 2,000 employees now residing in the heart of Yosemite Valley to new and more expensive housing outside the park. In addition, the Park Service is now reviewing plans again for limiting auto access to the Valley during the summer to substantially below the 7-9,000 cars entering the park each day, way above the limit established by the Park Service several years ago. But such plans always will meet with the powerful opposition of a concessioner whose principal goal is increased revenue and profits.)

It is these kind of continuing park planning issues that are greatly affected by the choice of a concessioner. This decision must be a prudent one, based on assessments of the nature of the firm, its background and demonstrated commitment to the mission of the Park Service, not overly influenced by technical or financial issues.

Profits are not the principal objective for our company, in which the majority of investment is from foundations and socially responsible investment funds.

Returns to the Government

Our investors will cooperate fully with the Park Service in implementing the General Management Plan and provide the maximum resources to that end.

- We are committed to take every measure possible to avoid any future reduction in our proposed fee payment, already 30% above that of the proposed concession awarded. This provides \$40 million in additional benefit to the Park Service.
- We are committed to private financing for our employee housing, thereby freeing for other GMP purposes an additional \$50 million in scarce park service receipts from the concessioner.
- Our bid also includes buying out the \$62 million MCA debt. Our proposal rids the Park Service of the onerous requirement that MCA appoint a replacement concessioner if the one selected by the Park Service fails to repay the debt.

Combined, these measures will yield the Park Service up to \$100 million more than the offer now being negotiated. The proposal of the YRT Services Corporation can not be eliminated by Park Service management intent on rushing a contract through that is of significantly less value and promises fewer long term benefits for the park's resources and for the park visitor.

Best and Final Offer

In order to complete the contracting procedure to benefit the park, we urge the committees to require Interior to request "Best and Final" offers from all the responsive bidders, a normal step in bid evaluations and negotiations.

In view of the concerns raised by the Park Service, and in the interest of helping serve the mission of the Park Service in Yosemite, we are making known at this point some parts of our Best and Final Offer.

First, we will give up any claim on a right of preference in contract renewal otherwise available to the next concessioner. This is consistent with our belief in open and full competition in the award of concession contracts and follows the lead of members of Congress in changes they have proposed.

We will eliminate any request for discussions concerning changes in operations resulting from the housing plan or concession services plan. As agreed by the Park Service, the impact of such changes on financial results would be addressed only in the four year re-setting of the fee payment.

We will attempt to eliminate the \$12 million limit on our proposed environmental expenditures. We understand that the Park Service will consider expense in excess of their \$12 million estimate in their four year re-setting of the fee payment. We will continue our commitment to share with the Park Service any savings in environmental clean up costs.

Recommended Actions for the Committees

My colleague, Mr. Donald Green, will describe to the committees how the Park Service conducted the appraisals leading to the surprising result that only one firm was found satisfactory in meeting all the Park Service requirements for the \$2 billion contract in Yosemite.

We request members of these two committees to urge the new Administration to seek "Best and Final" offers as the appropriate concluding stages of the contracting process and to have members of the new team at Interior participate fully in the selection process. This is the government's last opportunity to finance the General Management Plan for Yosemite and to obtain a firm commitment from the next concessioner to implementation of the GMP.

I also urge the committees to give careful consideration to the changes in evaluation and award procedures that Mr. Green is recommending for all future concession awards elsewhere in the National Park System.

Thank you.

Mr. MILLER. Mr. Green.

STATEMENT OF DONALD S. GREEN

Mr. GREEN. My name is Donald Green. I am the executive director of the Yosemite Restoration Trust, and I served as staff to the YRT Services Corporation that prepared the bid. I represented the corporation, not as counsel, but with the pro bono counsel on the appeal that we conducted over the last two months. I spent two weeks in depositions with Park Service personnel, and I am very familiar with the evaluation and selection process which I am going to speak about.

What was wrong with the process? Should Secretary Babbitt accept the conclusions reached by the former administration and the process on which it is based, or should he appoint members of his team to review the process and take steps to come out with a better deal for Yosemite?

We believe the process was seriously flawed, leading to a decision that could very well be fatal to Yosemite's future. In support of the conclusions, I am going to make five points.

First, the primary focus was on financial and money considerations. The Park Service resources protection or interpretive staff were not part of the evaluation process. The decision was rushed to perhaps serve political purposes or otherwise simplify the process. The panel proceedings were unfair to four out of five bidders, and the decision based on these procedures cost the Government from \$40 million in lost fees to perhaps \$100 million if the concessioner chosen will not provide housing for his employees outside of the park. Let me discuss each.

The panel focused on financing and risk. More than 96 percent of the decision memoranda that went from Jack Davis to the Secretary discussed only those matters. There were only four lines of each of the six bidders where the simple statement was repeated. All bidders were satisfactory with respect to management experience, environmental, and other matters. Period. So, the Secretary was given basically an analysis of these risks you have been talking about today. Why wouldn't they accept this liability? Why wouldn't they have their money available today rather than tomorrow, et cetera, but no discussion of the real issue as to how the concessioner is qualified to perform in the park outside of the financial issues.

If you ask the Park Service which firm was best in its proposals to protect the park resources, that question was asked in the request for proposal. They were interested in it, but they did not rank the firm answers on that criteria. They did not rank them with respect to the way in which the bidders would select merchandise and display souvenirs to enhance the interpretive mission. That is a very important question. \$25 million a year of gifts and souvenirs are sold in the park, and what is chosen and how they are displayed and how those facilities are laid out we think is vital to the visitor experience. That was not ranked in terms of the responses.

Who was best in designing systems to reward employees for supporting the NPS mission rather than meeting profit goals, another

important question laid out by the Government, but not at all ranked with their responses.

Finally, what were the programs put up to attract minorities and women and have them in positions of management, another question raised by the Government and not ranked in the offers. I might say in each one of these cases our response was determined to be very good in terms of the Park Service evaluation of our response. I have not seen the others, and they were not compared for anybody's benefit.

The experience of the national park and commitment to the National Park Service mission, again not ranked.

I believe if they had ranked offers with respect to these criteria, the decision would have been entirely different.

Secondly, the panel that spent 10 days in assessing the bids was composed entirely of business managers or concessions managers. There was no interpretive staff, no environmental staff, no resource protection staff, no park planning staff. The absence of these folks also led to a biased review and an incorrect bid assessment.

Third, the panel engaged in unprofessional and unfair practices. The chairman read all the bids before the panel met. This came out in the discovery process and was not debated. Then he switched his evaluation method from a prior written instruction to rank all bids in each of the criteria to a simplified satisfactory, unsatisfactory, marginal rating system. The switch led to improper disqualifications for all but one bidder. The chair knew that when he switched instructions, having read the bids. Why else would he introduce this switch?

The one satisfactory bidder got a phone call for clarification. None of the others received any phone calls for any clarifications whatsoever. These unfair and unprofessional actions led to the wrong selection.

Four, the prior administration controlled the selection panel and rushed the process. The National Park Service Director Ridenour announced that he would like to see the process completed before he left office in 2 months. The experience of the Park Service in simpler, smaller bids is more like 4 to 6 months, taking Yellowstone as the only other competitive case they have had with the exception of Ellis Island in the last 14 years because the preferential right never involves any extra bidders. In fact, the evaluation and selection process took 10 days in December, a target in fact that was set up by the panel chairman in writing.

The result of the process cost the Government from \$40 million to \$100 million, as I have said.

Four bidders were disqualified with respect to their effort, and no effort was made to explore ways to clarify these financial misunderstandings. The single bidder left provided a low fee to the Government and promised nothing on housing. He will, in fact, earn a return on investment that is way beyond what is required in this monopoly circumstance. As you know, the law provides that a reasonable return shall be given the opportunity to be earned. In fact, if you ask the Park Service what rate of return will this concessioner get on his contract under the assumption of a lower environmental expense, the lower fee that in fact is likely to be received, and other elements, I think you will find that it is a very,

very high return, certainly above the 14 percent that we were proposing for ourselves for our investors.

To rectify this process and get Yosemite both the resources it needs to restore the park and a concessioner strongly committed to Park Service goals, we recommend three steps for this committee.

We would urge you to have Secretary Babbitt appoint a new evaluation panel with broad expertise, that he appoint his person as chairman of the selection panel and take full responsibility, that he have his appointees request and evaluate best and final offers from all bidders and be responsible for the conduct of the final review process and the selection of the winner. This I am sure, Mr. Chairman, will bring in lots more money and lots more bids that are effective.

I would also hope that the new Secretary would ensure that the problems of Yosemite are not repeated in other parks. To postpone the solution until the next park, perhaps Grand Canyon, I would suggest you rectify it now for Yosemite before it is too late.

My longer statement provides more detail, and I might just make one or two brief comments on some of the comments I heard today where I believe the answers were not as I see them.

One question was, Is the possessory interest valued at \$61.5 million? The answer was yes. In fact, it is not. That is the value of the company. The value of the company, as it shows in the books which are public, includes the possessory interest, the buildings, and all its other assets, its linens, et cetera. The numbers are about \$20 million for everything else, and perhaps \$40 million for possessory interest.

So, when is that possessory interest paid off and when do those buildings get returned to the Government as a result of paying off the debt? I am not certain. It could be done in the first 10 years. It could be done in the last 5 years. But clearly, the value of the contract is \$61 million, not the value of the company.

The question of what liabilities were known when it was purchased. The decision on the value was made on January 7, and it has not changed, \$61.5 million. The environmental liabilities were not known at that time. The 8 months that it took to do the study by the National Park Foundation spending the \$500,000, we do not know what information was provided. We asked the Park Service, Can you tell us what the environmental liability was? No, they don't know. We asked the Park Foundation. No, they won't give it to us. Did they do a study? We don't know. So, we went into it on that basis. As you know, we were concerned that this might be a large issue.

Can anyone else pay off the note? Yes, they can. In fact, we said we would pay off the note if we were awarded the contract.

Are the changes in the concession services plan included in the contract? No, they are not. That is to be determined over the next 5 years as the money comes in and the Park Service decides what is to do after they finish their housing plan and their transportation plan. So, we do not know what is going to happen 5 years from now.

Does MCA have unlimited liability? Judge Horn said in her meeting that the liability of each firm is limited to the amount of equity they are putting in, which is \$12 million for everybody.

I think that is almost the end.

Does the Government have first right of refusal if someone wants to buy out the note? I did not see anything that said they did.

The last question that was asked by Congressman Vento was, Could revenues and profits drive the activities of the concessioner and therefore affect the concession services plan? The answer is, of course, it could. The decision every 4 years to renegotiate the fee will depend on profits, and in the past, as you know, the Government attempted at least once, if not more times, to get Curry Company to raise its fee from $\frac{3}{4}$ percent to 6 percent. The Curry Company argued effectively, A, we do not have to because our contract says we do not have to, and B, we do not agree with you because the risk is too great for us to raise any fee. I see these same arguments taking place 4 years from now.

This Congress has this chance and this chance only to correct the bid process, the evaluation process, the selection process, and finally the contract. I think if nothing takes place more than what we have in front of us, I am convinced that 4 years from now the Park Service on its own, as you saw who is going to make the decision, will be in an arbitration proceeding against the concessioner with whatever resources he has to demonstrate that, no, the fee cannot be raised. In fact, if you are going to take down these buildings and reduce our merchandise sales, we are going to earn less and we are going to have a lot of exceptional overhead expenses, and we will probably have to pay you less rather than more.

So, I am very concerned about the future of Yosemite, the amount of return that comes to the Government, as well as the process that was used in making the selection.

Thank you.

[Prepared statement of Mr. Green follows:]

Statement of Donald S. Green
Executive Director, Yosemite Restoration Trust
on behalf of the YRT Services Corporation

Concession Contract Evaluation Procedures for Yosemite National Park

Subcommittees of the Committee on Natural Resources
U.S. House of Representatives
March 24, 1993

What is wrong with the procedures used to evaluate bids for the Yosemite concession contract?

The issue before you today is not whether the bid evaluation procedures were legal. The issue is how you will respond to your right and responsibility to advise Secretary Babbitt on the next concession contract for Yosemite National Park.

Were the procedures used by the Park Service under the previous Administration to select the next Yosemite concessioner good ones? Should Secy. Babbitt accept them or keep the process open and re-evaluate the bids? We believe you should advise him that sound national park policy demands that he do the latter.

1. The Park Service evaluation and selection panels asked the wrong questions

The only questions they asked seriously were those having to do with financing and risk. This is contrary to law and good public policy.

Thirteen of the 16 criteria against which bids were to be evaluated and ranked, have nothing to do with finance: two are related purely to environmental protection, interpretation and preservation of park resources; six have to do exclusively with corporate organization, personnel and management policies; four concern maintenance and operating plans.

Yet they did not rank or compare offers on any of the criteria except the ones related to financing and risk. The selection was not made in accordance with the legislative requirement of evaluating the principal factors of management experience, financial capability and responsiveness to the RFP. The selection was made entirely on consideration of the financial risk and return to the government, which under Park Service guidelines, are secondary and to be used only in the case of ties.

You might ask the Park Service:

- Which firm had the best proposal on how to protect the parks resources? They don't know.
- Which firm was best on how the concessioner was going to choose and display gift and souvenir merchandise to enhance the interpretive mission of the Park Service?
- Which offer was best in how it was going to reward concessioner employees and managers for understanding and contributing to achieving Park Service goals rather than meeting profit objectives of the company, a main issue for the Park Service?
- Which firm proposed the strongest program to attract minorities and women to positions in management and in other jobs to reflect the community served by the Park? This was singled out as an element of a better offer.
- Which firm had the most experience in national parks or in similar circumstances?
- Which firm has demonstrated the strongest commitment to Park Service goals in Yosemite?

The Park Service should have conducted a complete comparative evaluation of all the responsive bids. If they had done so, they would have had five bids among which to choose, not just one.

2. The wrong people served on the Evaluation Panel

The Evaluation Panel was composed only of business (concession) managers.

- Where were the interpretive staff of the Park Service in the evaluation panel? Missing.
- Where were the environmental compliance officers to review the proposals for the cleanup of Curry Co's toxic mess?
- Where was the Planning Division, and its environmental quality staff?
- Where was the Natural Resources Division?
- Where were the representatives of equal employment?
- Where was the budget staff to assure the Park Service would get the maximum payment possible?

The makeup of the Evaluation Panel is one reason why non-financial, non-business factors were given short shrift.

3. The old Administration controlled the Selection Panel

Former Park Service director Ridenour had announced he wanted the process completed under his term. The selection process and the selection reflected the priorities of a lame-duck Administration. The new Clinton Administration must sign and enforce any new contract, and should be the ones whose priorities govern this most important of national park concession contracts.

4. Although the procedures thoroughly considered only financial matters, they disqualified bidders because of technical aspects that could easily have been clarified by phone calls. The process in fact short-changed the potential financial return to the park.

The panel did not take the valuable step of contacting all bidders for clarification of issues such as the timing of equity commitments or possible limits on incurring new debt. The procedures used gave undue weight to a bidder's willingness to take a substantial risk that the Curry's Co's toxics cleanup liability, which the new concessioner must assume, might be larger than the \$ 12 million expected.

As a result, four of the five responsive bidders were disqualified. It then seemed an easy choice to pick the one remaining bidder. Had several bidders passed the first round of evaluation, and then been asked for "best and final" offers, all bidders would have improved their offers and clarified the technical issues that resulted in disqualification of four bids.

As it stands, if the current process is not redone, the bidder chosen will likely earn an exorbitant rate of return on investment and take excess profits of \$30 to \$40 million that rightly should go to the park. This giveaway matches those now being fought by Congress and the new Administration on water subsidies, timber sales, and mining law. The contemplated giveaway is substantially greater than that resulting from the 3/4 of one percent fee granted to MCA when it bought the Curry Company over 20 years ago. You should not repeat the same mistake twice in Yosemite.

5. The Evaluation Panel's proceedings were conducted in an unfair manner

The evaluation panel chair opened and read all the bids before the Evaluation Panel met, and then changed his written instructions to the Panel from a comparative ranking of all bids on each of the sixteen criteria to a satisfactory, marginal or unsatisfactory assessment system. We believe this severely biased the evaluation.

The evaluation panel chair called one bidder for a clarification but gave no opportunity for other bidders to clarify points at issue that were then grounds for their disqualification. This irregular and improper action is clearly contrary to standard government contracting procedures and against the

guidelines established by the Park Service for concession bid evaluation. It prejudiced all but the selected bidder.

Recommendations:

1. Urge Secy. Babbitt to ask all five responsive bidders for their "best and final" offers, as permitted under Park Service procedures.
2. Urge him to appoint a new Evaluation Panel representing the range of expertise relevant to selection of the Yosemite concessioner. A new Selection Panel should be chaired by the incoming Park Service Director or someone else appointed by Secy. Babbitt.
3. Direct the new selection and evaluation panels to do a full comparative analysis of all aspects of the bids, not just the financial aspects.
4. Ensure that these problems do not recur during competition for other park concession contracts.

We have identified problems that have plagued selection of the Yosemite concessioner. We urge the subcommittees and Secy. Babbitt not simply to postpone solution of these problems to other concession contracts, but to act immediately with respect to Yosemite.

Don't acquiesce in the Park Service giving up the historic opportunity to consider fully and fairly all offers, including one coming from a group dedicated to de-urbanizing Yosemite Valley in accordance with the Park Service's own General Management Plan; who will pay all profits to the park above a minimum return on investment; and that has created a uniquely qualified firm to do the job right for the American public.

Yosemite deserves the best. The new Administration can seize the opportunity to give it the best. If it does not, Yosemite will suffer and all other parks will suffer. The public needs your vigilance and your help. Don't let either branch of government fail us.

Statement of Donald S. Green
Executive Director, Yosemite Restoration Trust
on behalf of the YRT Services Corporation

Concession Contract Evaluation Procedures for Yosemite National Park

Sub-committees of the Committee on Natural Resources and Energy,
U.S. House of Representatives
March 24, 1993

SUMMARY OUTLINE OF KEY POINTS

I. Procedural Failures

1. No ranking of bids on any of the principal criteria called for by the Park Service
2. Selection of best offer based on narrow technical financial factors
3. Drastic overstatement of environmental clean up liabilities faced by the Park Service
4. Wrong members of NPS assigned to the evaluation panel.
5. Evaluation proceedings conducted in unfair manner

II Impact of Procedural Failures

1. Range of offers to consider reduced to only one.
2. Best and Final Offers were not requested
3. \$40 million loss of government revenue
4. Unreasonably high rate of return and profits approved for concessioner
5. Future of Yosemite at risk

III Why the Park Service did such a poor job

1. Inexperienced staff, limited expertise represented
2. Responded to Directors request for urgent action
3. Management team lost sense of primary mission of NPS
4. Unwillingness to award contract to environmental based concessioner

IV Actions Recommended for the Oversight and National Parks Sub-committees

1. Advise Interior to Request Best and Final Offers on Yosemite contract to avoid \$40 million gift of government funds to proposed concessioner
2. Request Secretary Babbitt to appoint a new evaluation
3. Have Interior correct procedural deficiencies for all future contracting

Statement of Donald S. Green
Executive Director, Yosemite Restoration Trust
on behalf of the YRT Services Corporation

Concession Contract Evaluation Procedures for Yosemite National Park

Subcommittees of the Committee on Natural Resources
U.S. House of Representatives
March 24, 1993

Mr Miller, Mr Vento and members of the National Parks and Oversight Committees.

My name is Donald Green. I am the executive director of the Yosemite Restoration Trust, a non profit group formed to support the implementation of the General Management Plan for Yosemite.

I served as staff to the subsidiary the Trust formed to submit a bid to operate the concession in Yosemite. Its purpose is to make Yosemite Valley less urbanized and to return maximum revenue to the Park.

I represented the bidding organization, YRT Services Corporation, in its recent appeal of the selection of another company for the tentative award of the contract. I spent two weeks with our pro bono attorneys and the Justice Department attending depositions of eight Park Service personnel and consultants responsible for and involved in the selection process. I am very familiar with the process used by NPS management to arrive at the selection they have made.

I am an economist by training, with prior experience in management positions with the Office of Management and Budget, Bank of America and Stanford Research Institute. In each case, I was personally involved with developing and applying evaluation procedures and have a life-long career interest in good government.

I will present:

- I. The principal shortcomings in the process used by Park Service management in arriving at their decision
- II. What the effects were of the flawed process
- III Why the Park Service did a poor job
- IV. What action your committees might take to correct the process in this case and how to protect against similar problems occurring in concession awards in other parks

I Procedural Failures

1. The NPS management did not rank or compare offers on any of the criteria enumerated in the request for bids.

In support of this conclusion, I present the only written comparative analysis provided by the evaluation panel in its presentation to the NPS Management Selection Committee: the simple one page matrix presented below.

After 10 days of intensive review of bids, this matrix was the only comparative document presented to the selection panel. The evaluation panel also provided 150 pages of non-comparative comments on each proposal, what the Park Service calls individual analyses.

The five person selection panel met for eight hours to review the materials and the oral presentation of the evaluation panel. They confirmed the recommendation of the evaluation panel that since four firms responded satisfactorily on 14 of 16 criteria and one firm was satisfactory in 16 of the 16 criteria, the latter was declared the winner.

One week later, a decision memorandum was prepared supporting this conclusion. (See memorandum from Jack Davis to the Deputy Director Cables, December 17, 1992, attached.)

2. The staff evaluation and management selection panels made their decisions based entirely on narrow technical, administrative and financial matters.

They made their decision wholly on the basis of administrative and financial criteria. This is patently against the provisions of the National Parks Concessions Act.

The Park Service matrix shows that all responsive firms are satisfactory (or marginal) in 13 to 15 of the criteria, except for one or both of the last two – which are financial criteria. (One firm was also unsatisfactory in insurance, item 10.) The same matrix is presented in Table I with the addition of descriptions of what each of the sixteen criteria represents.

YOSEMITE CONCESSION OFFEROR SUMMARY RATINGS

	FWBS	DNC	YBT	YPS	AMEAC	CNRM
CRITERION #1	S	S	S	S	S	
CRITERION #2	S	S	S	S	S	M
CRITERION #3	S	S	S	S	S	M
CRITERION #4	S	S	S	S	S	
CRITERION #5	S	S	S	S	S	
CRITERION #6	M	S	S	S	M	
CRITERION #7	S	S	S	S	S	
CRITERION #8	S	S	S		S	
CRITERION #9	S	S	S	S	S	
CRITERION #10	S	S	S	S	S	
CRITERION #11	S	S	S	S		
CRITERION #12	S	S	S	S	S	
CRITERION #13	S	S	S	S	S	
CRITERION #14	S	S	S	S	S	
CRITERION #15		S			S	
CRITERION #16		S		S		

EXPLANATIONS

CRIT 1 = CRITERION #1 ETC.

S = SUCCESSFUL

M = MARGINAL

US = UNSUCCESSFUL

Table I

Summary of Park Service Evaluation Criteria and Ratings of Offers

<u>NPS Evaluation Area</u>	<u>NPS Evaluation Criteria</u>	<u>Ratings for ALL responsive bidders</u>
I Identification	1. Structure/Control	S
II Experience	2. Corporate Competence	S
	3. Personnel	S
III Plans for Operations	4. Staffing	S
	5. Employee policies	S
	6. Maintenance Plan	S/M
	7. Operating Plan	S
	8. Safety and Security	S/M
	9. Equal employment	S
	10, 11. Insurance	S/U
IV Park Service Mission	12. Preserve, Protect, Interpret	S
	•Env protection	
	•Interpretive programs	
	•Merchandising	
	13. Role in NPS Mission	S
V Financial	14. Estimate of Rev/Expense	S
	15. Financing Terms	S/M/U
	16. Fee Payment (CIF)	S/U

There was no matrix evaluation form nor memorandum submitted to the Park Service Selection Panel presenting any narrative or qualitative or quantitative comparison of each element for all proposals.

The kind of minimum summary evaluation that decision makers need is suggested Table II. We prepared Table II as a shortened version of a type of useful management decision making tool that should have been used.

Table II summarizes Park Service comments made in their individual analysis of the proposal submitted by YRT Services Corporation. In this assessment, YRT Services Corporation looks

like an interesting proposal, worthy of assessment against the other bids in all criteria, before making a selection. This was not done by the evaluation panel or the selection panel.

(There are of course far more sophisticated methods available and in use by other agencies for making complex decisions under conditions of uncertainty.)

Table II

SUMMARY of NPS COMMENTS
ON YRT SERVICES CORPORATION PROPOSAL
(Table Prepared by YRT Services Corporation)

<u>NPS Evaluation Area</u>	<u>NPS Evaluation Criteria</u>	<u>Ratings for YRT Services Corporation</u>	<u>NPS Evaluation Panel Comments on Proposal of YRT Services Corp</u>
I Identification	1. Structure/Control	S	Clear structure, knowledgeable Board
II Experience	2. Corporate Competence	S	Relevant experience of organizers
	3. Personnel	S	Extensive experience
III Operating Plans	4. Staffing	S	Fully described, adequate transition
	5. Employee policies	S	More than adequate
	6. Maintenance Plan	S	Accepted NPS plan
	7. Operating Plan	S	Accepted NPS plan
	8. Safety and Security	S	Accepts loss control plan
	9. Equal employment	S	Most specific of all offers; commit to goals
	10, 11, . Insurance	S	Above minimum required
IV Mission	12. Preserve, Protect, Interpret	S	
	• Env protection		• good job, specific actions
	• Interpretive		• comprehensive, new initiatives
	• Merchandising		• excellent job of redirecting programs
	13. Role in NPS Mission	S	strong commitment thru profit sharing and from non profit origins
V Finance	14. Est. of Rev/Expense	S	Well reasoned
	15. Financing Terms	U	evidence not compelling that full \$12 million "is available" at time of proposal
	16. Fee Payment (CIF)	U	• reasonable return on investment • Present Value of Fee payment is 6.1% of revenues • limits environ liability to \$12.3 million • renegotiate fee related to changes in operations

The eight page decision memorandum presented to Secretary Lujan had 4% of the text (15 out of 400 lines) addressed to non-financial matters, i.e. preservation, interpretation, management, related park experience and equal employment programs. No distinctions were drawn for the Secretary among the offerors on any matters except financial. (The decision memorandum from Associate Director Jack Davis and approved by Deputy Director Herbert Cables is attached to this statement.)

Selection Panel Chairman Davis and Evaluation Panel Chairman Steven Crabtree both have stated they did not compare the responses of bidders on each of the 13 non financial criteria since only one firm was judged satisfactory on the three financial criteria and on this basis was selected as the winner.

To test this finding, you might ask Selection Panel Chairman Jack Davis the following questions. Since they did not make a comparison of bids in any of these criteria, the answer will have to be "I don't know".

- which firm had the best proposal on how to protect the parks resources?
- which firm was best on how the concessioner was going to choose and display gift and souvenir merchandise to enhance the interpretive mission of the Park Service?
- Which offer was best in how it was going to reward concessioner employees and managers for understanding and contributing to achieving NPS goals rather than meeting profit objectives of the company, a main issue for the Park Service?
- Which firm proposed the strongest program to attract minorities and women to positions in management and in other jobs to reflect the community served by the Park? This also was singled out as an element of a better offer.
- Which firm had the most experience in national parks or in similar circumstances?
- Which firm has demonstrated the strongest commitment to Park Service goals in Yosemite?

The answers provided by Mr Davis might convince you of the basis on which the award was made and of the considerations that were not taken into account.

3 NPS management drastically overstated the effect of the limits placed on environmental clean up liabilities proposed by three of the bidders. As a result the award was made to the firm evaluated by NPS management as apparently willing to take the largest risk and earn the highest return for themselves.

One firm who had no funds projected for environmental clean up, but stated no limit on clean up expense, was found satisfactory in its financial forecast and contributions to the park Capital Improvement Fund, while other firms budgeting \$12 million for this purpose, with any excess to come from the CIF, were found unsatisfactory.

What was the risk that Delaware took?

US Court of Federal Claims Judge Marion Blank Horn, in her oral decision, stated that the Park Service was wrong in assuming the winning bidder had in fact proposed unlimited liability for environmental clean up. It was her opinion that the liability was the same for all bidders, namely the \$12 million in equity each was required to provide. (Our briefs filed with the court are submitted for the record.)

The firm selected for contract negotiation, as any bidder, will be able to seek a reduction in proposed fee payments every four years if environmental costs exceed their forecast.

What was the size of the risk the Park Service was unwilling to consider absorbing in lieu of concession fee payments, if necessary?

- The Park Service made no independent estimates of its own on the cost of clean up, either at the time the contract amendment was approved transferring ownership from MCA to Matsushita and approving the purchase of the company by the National Park Foundation, or in the review of costs estimated by some of the firms bidding on the contract.

The Park Service evaluation team took an average of clean up costs estimated in three of the six bids at \$12 million over 12 years. Costs for the first four years are estimated at \$5 million. Concessioner fee payments of over \$60 million are available to be used for environmental clean up if necessary, thus greatly reducing the Park Service's real exposure to risk.

- The Park Service desire to shift its liability for clean up totally to the concessioner may not stand up in court at such time as there would remain no opportunity for profit for the concessioner.

The accomplishments of the Park Service in policing environmental clean up by concessioners in the parks are not exemplary. Let's look at the Yosemite case. The California Water Quality Control Board advised the Park Service and their tenant, the Curry Company, in 1990 that Curry was to present a schedule for remediation of soil and water contamination in 25 underground tank sites. No schedule for clean up was presented by the Curry Company nor requested by the Park Service until January, 1993. Now the concessioner is required to initiate

remediation at two sites before September, 1993 with the balance to be paid for by the next concessioner, taken from funds otherwise available to the Park.

The issue of concessioner environmental clean up in national parks is critical throughout the National Park System. The same issue will arise in Grand Canyon, Yellowstone and elsewhere. The position of the NPS regarding responsibility and prompt remediation must be made clear in this case and for concessioners in all other parks.

4. The wrong persons were on the evaluation panel.

The evaluation panel was composed only of business (concession) managers. As a result, non-financial, non-business factors were given short shrift.

Thirteen of the 16 criteria against which bids were to be evaluated and ranked, have nothing to do with finance: two are related purely to environmental protection, interpretation and preservation of park resources; six have to do exclusively with corporate organization, personnel and management policies; four concern maintenance and operating plans.

The evaluation panel of the Park Service was composed entirely of business manager and accounting/finance staff, or concession managers and accountants (in Park Service parlance.)

A number of questions occur that the Committees may wish to pursue with the Park Service. The answers in each case, to my knowledge, is that the skills and expertise called for were not represented on the panel, nor were they called on in any way to review the bids.

- Where were the interpretive staff of the Park Service in the evaluation panel?
- Where were the environmental compliance officers of the Park Service to review this controversial aspect of the different bids?
- Where was the NPS Planning Division, and its environmental quality staff?
- Where was the Natural Resources Division?
- Where were the representatives of personnel, equal employment, contracting? They all have a great stake in the outcome of this decision.
- Where was the NPS budget staff?

The outcome of this decision is worth up to \$340 million to the Park Service.

- The Park Service will receive the concessioner buildings for \$100 million of concessioner revenues paid to MCA, otherwise available to the Park Service
- the buildings will be maintained at a cost of \$120 million
- the concessioner will pay from \$60 to \$120 million in fees to the government, depending on whom is selected.

Was a presentation limited to the analysis performed by the business managers the right framework for analysis? Was one eight hour day enough time for five senior Park Service management personnel to seriously consider the issues involved in this decision?

Somehow the analysis of bids was left to the business managers who focused narrowly on differences in the business and financial aspects of the bids. They had virtually nothing to say to top management concerning the relative merits of the proposals in all thirteen non-financial areas of great and lasting importance for Yosemite and for the Park Service.

5. The proceedings of the evaluation panel were conducted in an unfair manner. The head of the panel unfairly called one firm for a clarification and gave no opportunity for other firms to clarify points at issue. It is clearly contrary to standard government contracting procedures and against the guidelines established by the NPS for concession bid evaluation.

In the case of YRT Services Corporation, the issues on which we were judged unsatisfactory could easily have been resolved with a phone call. I believe another witness will testify further to the impact of this procedure. In our case, the issues involved timing of our binding financial commitments and understandings concerning the basis for future fee adjustments

As a second matter, the evaluation panel chairman opened and read all the bids before advising the panel how the bids were to be evaluated. We believe this severely biased the evaluation. After reading the proposals, he changed his former written instructions to the committee from a comparative ranking of all bids on each of the sixteen criteria to a satisfactory, marginal or unsatisfactory assessment system. This obviated the need to compare bids on a more sophisticated and thorough manner, and perhaps in his mind, could avoid the time needed for calling for best and final offers from all bidders.

This irregular and improper action taken in clear violation of stated Park Service policy, prejudiced all but the selected bidder. It clearly prejudiced the full evaluation of those firms who had relatively strong proposals in the non financial features of their offers.

II Impact of Procedural Failures

- A. The range of offers to consider fully was reduced to a single firm
- B. The selection was made entirely on administrative consideration of financial issues
- C. The government stands to lose significant revenue
- D. The Park Service has approved an unreasonably high rate of return
- E. The future of Yosemite is at risk

A. The range of offers considered was reduced to a single one.

After approving 12 firms as qualified to receive the Statement of Requirements and present a proposal, the Park Service received six proposals. Firms such as Marriott and Hyatt declined to bid, stating the liabilities they were required to accept in purchasing the Curry Company were too great a risk, given the price of the purchase.

Of the six bids received, one was judged "non-responsive" in that it did not provide significant required information. Five of the bids were judged responsive.

Based on administrative interpretations of certain elements of the proposals received, five were judged "unsatisfactory" in meeting one or two of the 16 selection criteria. Based on this process, The Park Service management decided not to compare each bid on the 14 criteria on which all five offers were satisfactory. They concluded that the one offer that was at least satisfactory in the one or two criteria in which others were not satisfactory was "clearly the best."

B. The selection was not made in accordance with the legislative requirement on the basis of evaluating the principal factors of management experience, financial capability and responsiveness to criteria laid out in the request for proposals.

The selection was made entirely on consideration of the financial risk and return to the government, which under NPS guidelines, are secondary and to be used only in the case of ties.

While risk or uncertainty is not explicitly recognized in the concessions policy act or in NPS guidelines, it is in fact an important aspect clearly related to financial return.

The discussion in the decision memorandum of why the selection was made consists entirely of commentary on administrative financial concerns. They concern timing of and authentication of binding commitment for equity investment; questions of possible concessioner limits on taking on new debt; and whether a limit on environmental expenses was an acceptable condition of an offer or could be assessed and negotiated. No attempt was made to clarify the issues. Nor were requests made for best and final offers.

As a result, no comparisons were made among the firms of the 13 non-financial criteria established by the Park Service. The decision to select the winner was based wholly on administrative financial considerations, with no comparative analysis of all the firms' management, experience, personnel, environmental protection, interpretive programs, or commitment to serving the mission of the National Park Service.

C. The government stands to lose significant revenue.

The improper evaluation of the environmental risk taking led NPS management to accept one of the lowest fee payments offered, at a cost to the government estimated at \$30 to \$40 million, depending what proposal may be accepted.

DNC bid valued at 4.5% not 5% of revenues, assuming historical negative third quarter Curry Company working balances on closing	\$10 million
YSC bid above DNC	16 million
YSC projected return of unused environmental reserve	5 million
YSC provided profit sharing	<u>12 million</u>
<u>Total</u> funds lost for Yosemite	\$43 Million

D. The Park Service has approved a rate of return for the selected concessioner that is likely to be unreasonably high.

As a result of accepting the low fee bid, the Park Service is permitting a return on investment to the concessioner that is likely to be unreasonably high. The return to the selected concessioner operating a government controlled monopoly is likely to exceed norms for firms in this industry that operate in a competitive setting.

Analysis performed by the attorney for YRT Services Corporation, based on Evaluation Panel data, concludes that the Return on Investment to DNC is likely to be substantially higher than presented in the evaluation summary for several reasons. (Plaintiff's Motion for Summary Judgment, page 28)

- the panel assumed a fee payment above the amount likely to be paid.
- expenses estimated by DNC may achieve the lower level experienced by the Curry Company
- Environmental expenses may be the lower amount estimated by the consulting engineers and used by the Park Service in their comparative financial analysis, rather than the higher figure used in calculating the returns to DNC.

By contrast, the Park Service found the before-tax rate of return of 14% projected for the YRT Services Corporation to be reasonable. The committee may wish to inquire what specific rates of return the Park Service forecasts to be realized by DNC under alternative assumptions.

E. The future of Yosemite is at risk.

As a result of the substantially lower fee to be received, and the large sums to be spent for the purchase of the buildings for the Park Service under the MCA loan, funds available to implement the Yosemite General Management Plan will be severely limited. Funding will fall \$50 million short of what the Park Service requires over the next 15 years.

This means the de-urbanization of the Valley agreed upon in 1980 will not be accomplished for another two decades, if then. The Valley will continue to be severely over-strained to support the 2,000 employees living there, and to support the overly dense lodging and other facilities provided for visitors. The visitor experience will continue to be degraded and the park's resource further compromised.

III Why did NPS do such a poor job?

Why did the Park Service Evaluation Panel and Selection Panel do such poor jobs in this most important decision?

I'm not sure I can answer that satisfactorily; perhaps the Committees will be able to determine the answer for themselves. But I will note several factors that I am certain influenced the process:

1. The NPS staff and management is totally inexperienced and unqualified to perform the task at hand. The GAO, Interior Department Inspector General and Task Force on Concessions all pointed to the lack of analytic capacity in the concessions branch. They have had only one major competitive award over the past 13 years. (Because of preferential right of renewal, no one bids.) The Yosemite case was exceptionally complicated by requiring the concessioner to purchase the Yosemite Park and Curry Company.
2. The Regional Director chose only staff of the concessions branch to serve on the evaluation panel. That may be tradition in the Park Service on simple contract extensions, but it makes no sense in this case where a wide range of skills and experience covering the breadth of the Park Service expertise is needed. (Even the consultants hired did not have the experience required to provide advice on the magnitude of issues raised in this evaluation.)
3. The panel heard former Park Service Director Ridenour's public statement that he wanted the process completed under his term, only two months after the bids were received.
4. The NPS staff and management wanted to avoid the difficult task of assessing the relative strengths and weaknesses of each proposal. Instead they in effect disqualified all but one bidder. This hastened the process, made it easier and, they believed, more defensible in court.
5. NPS management has lost its direction and sense of mission. It takes more seriously its mandate to serve the public now than its primary responsibility to protect and preserve the resources of the system for all times.

It's the same National Parks management team that in the planning process, prior to the issuance of the proposal request, proposed several actions for Yosemite contrary to its own General Management Plan. These proposed actions included:

- constructing six, 24 unit, two story new motel buildings in the heart of Yosemite Valley (Draft Concessions Services Plan). Opposed by the Yosemite Restoration Trust and deleted from the Final Concession Plan.
- building a 1000 person town around a meadow near Yosemite Valley, destroying not only a lovely meadow in Yosemite National Park but destroying the habitat of the great grey owl, an endangered species. (Draft Housing Plan). This also has been opposed by the Yosemite Restoration Trust; the draft plan has not yet been approved nor changed for re-issuance.
- not requiring its tenant, the Yosemite Park and Curry Company, to comply with the instructions of the California Water Quality Control Board issued in 1990 to promptly schedule clean up of ground and water contamination from 24 underground tanks in Yosemite. Instead, this Park Service management team left the expensive job to languish four years, leaving the meadows being contaminated further, and larger profits accruing to the concessioner. Finally, in a deal to acquire the property, the Park Service management pushed the responsibility for clean up on to the next concessioner and ultimately to the American public.

(The Yosemite Restoration Trust advised the California Water Quality Control Board last year, when the terms of the MCA buy-out were released, that the responsibility for toxic clean-up had been transferred by the Park Service to the next concessioner. This prompted the California authorities to demand a prompt clean-up schedule by the Curry Company to do as much as possible before the end of their contract.)

6. Perhaps it was the desire of NPS hierarchy to deny a contract award to a concessioner that springs from an environmental background, that has a record of being more aggressive than the Park Service in efforts to achieve the goals of the GMP for Yosemite.

IV Action Proposed for the Natural Resources Subcommittees

1. Urge Secy. Babbitt to ask all five responsive bidders for their "best and final" offers, as permitted under Park Service procedures. This is the next logical step in the contracting process. The process is not closed when one firm is selected for negotiation. It is not closed until the award is made and the contract is signed. Requesting Best and Final Offers and evaluating responses can be accomplished in four weeks, without delaying the award of the final contract. Best and Final Offers will resolve outstanding financial issues concerning assurances on availability of equity, any limitations on incurring debt, and the timing of binding commitments for equity investment.

2. Urge Secy. Babbitt to appoint a new Evaluation Panel representing the range of expertise relevant to selection of the Yosemite concessioner. A new Selection Panel should be chaired by the incoming Park Service Director or someone else appointed by Secy. Babbitt.

We also recommend that a person with appropriate senior investment banking expertise from outside the Department be appointed to assist the team in this complex \$ 2 billion contract involving the acquisition of a \$62 million company. The Park Service on its own does not have the right staff with experience to take on this major competitive assessment.

3. Direct the new selection and evaluation panels to do a full comparative analysis of all aspects of the bids, not just the financial aspects.

4. Ensure that these problems do not recur during competition for other park concession contracts.

Require the following steps in future concessioner bid evaluation and contract awards:

- broad representation in proposal evaluation teams
- comparative analysis of all aspects of each offer
- consideration of all factors in evaluation of bids
- evaluation procedures be conducted in a fair manner
- best and final offers in all competitive awards in contracts above \$10 million.
- Park Service adherence to the Federal Procurement regulations in issuing contracts above \$10 million.

5. Require prompt environmental clean up by existing concessioners in all parks

Conclusion

We have identified problems that have plagued selection of the Yosemite concessioner. We urge the subcommittees and Secy. Babbitt not simply to postpone solution of these problems to other concession contracts, but to act immediately with respect to Yosemite.

Award of the Yosemite 15 year, \$2 billion contract on the terms proposed involve a government subsidy or outright gift to the proposed concessioner in the amount of \$30 to \$40 million. This subsidy matches those now being fought by the new Administration in water subsidies, timber sales and mining law. The magnitude of the contemplated subsidy in the Yosemite contract dwarfs the worst of the sweetheart deals now being fought against elsewhere in the government. The contemplated subsidy is substantially greater than the gift of the 3/4 of one percent fee granted for to MCA when it bought the Curry Company over 20 years ago. You should not repeat the same mistake twice in Yosemite.

The intent of the Park Service in attempting to award a contract through a competitive process is right, but the process they have followed was wrong. Don't let the process go unchallenged and unchanged. Don't make a \$40 million gift of US funds to a company for providing the kind of services appropriate to Yosemite National Park. The company will have a 15 year or longer monopoly on providing services, monitored only by the strength and purpose of the National Park Service.

Don't acquiesce in the Park Service giving up the historic opportunity to consider fully and fairly all offers, including one coming from a group dedicated to de-urbanizing Yosemite Valley in accordance with the Park Service's own General Management Plan; who will pay all profits to the park above a minimum return on investment; and that has created a uniquely qualified firm to do the job right for the American public.

If the request is not made by the new Administration for Best and Final offers, the American people will have lost the single best opportunity to change the way concession contracting is done in the Park Service; Yosemite will certainly suffer, and because of the unhappy precedent, all other parks will suffer; all of us here today will suffer as will all future generations of park visitors.

We thank you for the opportunity to bring to light the nature of the process used to date. The public needs your vigilance and your help to make things happen in the right way. Don't let either branch of government fail us.

Mr. MILLER. Thank you.
Mr. Read.

STATEMENT OF RANDOLPH C. READ

Mr. READ. Yes, Mr. Chairman. First, I want to thank you for the opportunity to testify here before these subcommittees today to let you know the views of Yosemite Park Services.

I also want to pass on from Mr. George Gillette his apologies, who had hoped to be here, but unfortunately, a last minute change in his schedule prevented him from being here today.

We have talked about today already that the Yosemite concession contract is the largest and most important in the Park System. We estimate that over the contract term that revenues will approach, if not exceed, \$2 billion. Of course, the process that we have talked about here may be precedent-setting as well.

Let me first confess to you to being a lifelong Yosemite enthusiast. I have practically worshipped the park since I was a child, and that is what got us initially interested in this process going back long before MCA became the twinkle in the eye of Mr. Matsushita over in Osaka.

We have put together a group of professional and financial partners with the primary aim to help preserve Yosemite, not only over our lifetimes, but for future generations to come, and to do this all with the highest degree of concern and regard for the environment. We view operating in Yosemite as a trust, more than a right or an opportunity for profit. At a time of increased concern over our national environment, the pristine and breathtakingly beautiful Yosemite must be cherished and nurtured, not exploited. The park, its mountains and meadows, the streams, the trees, the wildlife, they are the show here, and the concessioner is in place merely to accommodate the visitor experience.

We appreciate the opportunity to bid on this contract, and we were pleased to have provided the National Park Service with the best offer of all the potential concessioners that went through the process. However, for reasons that we feel are unfounded, we were not awarded the contract, to the detriment of not only our group, but the American people as well. Throughout the process we were pleased to work with the Park Service and were most impressed with many of the Park Service individuals and particularly with Superintendent Finley, who has demonstrated here today his extreme grasp and knowledge of the park. We look forward one day to working with him if we are awarded this contract.

Notwithstanding that, we must respectfully raise significant questions about and be critical of the bid and selection process. The bid process was cumbersome. It provided primarily raw data with few digested material that would have encouraged more bids for the American people versus fewer bids.

Further, the Park Service negotiated transaction with MCA—let's be generous and call that unusual—but it clearly resulted in reduced revenues for the Park Service because of the burdens that transaction places on the new concessioner. That is probably a whole entire subject which we could spend endless hours on, that particular negotiation and that contract.

Regarding the selection process, we do not believe that the Park Service performed the job intended and we do not believe that their profits produced the best bidder owing to several issues addressed in more depth later in my testimony and in my written testimony presented to these committees.

Specifically—and it was admitted here this morning by Mr. Davis—the Park Service did not perform the comparative analysis of all responsible and responsive bidders, as required by the National Park Service's own source selection plan provided in the procurement documents. We believe this was due in part to the hurried and regrettably incomplete, if not sometimes actually careless, evaluation process which lasted only 10 days and the selection of only 2 days, we learned here this morning.

The result of this flaw in the procurement process had a specific negative impact upon the evaluation of my company. To top it off, one simple phone call could have clarified the only alleged problem found with our proposal, and we would, therefore, have been shown to be the best bidder for this award. Strangely, a phone call was made to Delaware North for clarification, but not to us. That call to us should have been made to clarify any apparent ambiguities the Park Service allegedly found in our proposal. Indeed, such a call is required under the National Park Service regulation NPS48.

Of greater importance to these subcommittees, however, is the negative effect this systematic flaw in the procurement process had upon the Secretary and the Department of the Interior. Instead of winnowing down a large group of initial bidders to a smaller group of attractive and responsible proposals, this procurement and selection process eliminated all but one bidder. The Secretary thus was not presented with a genuine choice of concessioners. He was confronted with only one surviving bid and no real choice at all.

That was not the express intent of the procurement, nor was it the necessary result. Even now, particularly given the opportunity presented by these hearings, we understand the new Secretary is reviewing this process, and hopefully will avail himself to a responsible choice among attractive offers, which we believe should include ours.

Specifically in our case, that would mean the Park Service place only a phone call to clarify the one issue where we were allegedly found unsatisfactory, and that is with respect to the form of our commitment letters of \$12 million in equity for working capital. Now, these commitments come from entities and individuals with combined net worth of almost 100 times greater than that requirement.

In summary, therefore, I believe my company was not treated fairly and should be given the opportunity to clarify the Park Service's misunderstanding of our proposal, which led to the elimination of Yosemite Park Services from the competition because of this one mistake on the part of the Park Service.

Secondly, if that is rectified, the Secretary will have the opportunity to make a responsible choice among bidders. In that event and for the reasons I will state in more specific detail, I believe Yosemite Park Services far out-distances all the remaining offerors, including the proposed tentative awardee.

This is especially so with respect to the important capital improvement fund, or CIF, contribution. Delaware North proposed a contribution which, under the best circumstances, would only just meet the minimum 5 percent fee required by the National Park Service and which under the more likely scenario would on its face fail to meet that minimum by a factor of 10 percent, dropping to 4.5. In sharp contrast, Yosemite Park Services proposed a percentage fee that would always meet the minimum and which could range up to 300 percent greater than the maximum offered by Delaware North. Yet, this was ignored and this fact was not even presented to the previous Secretary in the Park Service summary of all bidders.

We understand that Secretary Babbitt is now reviewing the entire process centering around this award itself, hopefully with a view to awarding it to the best bidder, which we believe is our company. We welcome and encourage that review.

A detailed review of all offers will reveal that Yosemite Park Services made the best offer. It is the only applicant that both, one, placed no limits on assumptions of environmental liabilities and cleanup, and two, always had a CIF contribution over 5 percent. On these two critical items, no other bidder did this. The Park Service failed to even make this fact available to the Secretary.

Additionally, Yosemite Park Services is one of only two applicants that has made its concern for the environment and the park of paramount importance, as exemplified by our proposed including of the Sierra Club on our board of directors and our proposed profit contribution to the national parks through the Sierra Club. Indeed, the National Park Service has expressed its high praise for our qualifications and proposals in this respect. Of all the offerors, I believe Yosemite Park Services is unmatched in its environmental concerns, except of course for our friends here to my left at the non-profit Yosemite Restoration Trust, which were disqualified on other important criteria not relating to the environment.

Despite the announcement by the National Park Service in the prospectus that selection of the best proposal would be determined by assessing the relative merits of all final Phase II applicants against the announced evaluation criteria, by process of elimination, the selection panel chose Delaware North not as the best overall offer, but by what they deemed to be the only remaining offer, and this was wrong on its face.

Therefore, Yosemite Park Services specifically has submitted to and asked the Secretary of the Interior to review and reevaluate its application of the entire process centering around the award. This will include rectifying the nine errors that we believe the Park Service has made, which I have submitted as an exhibit to my written testimony.

If a newly constituted panel, which has been suggested, would objectively compare the six final offers made to the National Park Service, which we have done here on this chart—the new way everyone is communicating, you have to have a chart, or you can't go and talk to anybody. I apologize for it being so small. I did not realize we would be quite this far from you.

Mr. MILLER. That is the chart that is in the back of your—

Mr. READ. It is the chart in the back of the book, which shows all six received offers and reviews six critical criteria in there. The Park Service has mentioned this morning that while there were 16 evaluation criteria, many of those criteria were found completely satisfactory by all bidders. I am not going to spend any time on that here today, but I just want to focus on these six here.

If you look at that, it clearly jumps out at you that Yosemite Park Services was the only offeror that met all six of these critical criteria centering around the CIF always being more than 5 percent, as requested, no environmental liability limits, which the Park Service likes to forget that there were two offerors that made that bid, Delaware North and us. Of course, the strong environmental credentials, which Mr. Green has mentioned earlier, we think should be a critical part of this and was not given appropriate weighting in the process. Equity funding in place is not unimportant. We believe that you need to write the check. Conditions on the offer in terms of requiring changes, and assumption of the MCA obligations.

Now, we look at the other offers. We have Delaware North in the second position. Their bid was not only, under certain circumstances, below 5 percent, but in all likelihood now, according to the Park Service, will in fact be at 4.5.

TW Services, while they had a higher CIF bid, did not assume the environmental liabilities, placed various conditions, and even failed to agree to assume the MCA obligations. In addition, from their funding perspective, with their recent leveraged buy-out, their debt covenants may present some problems, according to the Park Service.

YRT in its first 4 years had a CIF of only 40 percent of the minimum. Some of their payments in the back, although we do not know all the details of it, were conditioned on profit participation. So, if the concession is run like a nonprofit business, it is difficult to tell exactly what the American public will receive on that. It placed restrictions on environmental liabilities, which we talked about, and importantly, only raised \$7 million of the required \$12 million, and some additional other conditions on the purchase.

AMFAC was clearest the lowest of the responding bidders. Their CIF extremely low, 65-40 percent below the requirement, would not assume the environmental liabilities, as well as placed various conditions on their offer.

California National Resources, as has been talked earlier about, was completely nonresponsive.

So, to review this, we believe that the best overall offer was clearly submitted by Yosemite Park Services. This is substantiated by the fact that, one, our partners are willing to not only contribute the \$12 million of equity required, but would contribute even more if necessary.

Two, we placed no limits on the restrictions on the environmental liabilities we will assume.

Three, our CIF is always above the 5 percent and in some cases up to 300 percent over Delaware North's. Further, we have been willing to advance up to \$20 million to help jump start the capital improvement process above and beyond what is required.

Yosemite Park Services we believe has demonstrated its deep concern for the environment, as exemplified by a number of our proposals, including the involvement of the Sierra Club.

Five, there are no significant conditions to the Yosemite Park Services offer.

Six, not only will Yosemite Park Services agree to assume the MCA obligations, which certain others have not, but Yosemite Park Services has developed an outstanding and creative proposal to reduce the carrying costs of the MCA debt to a refinance, which we believe no other group has, although we were interested to hear just today that potentially YRT has as well.

Seventh, Yosemite Park Services has developed other outstanding and unique proposals which were given little weight in the evaluation, including an establishment of an arts and education center, without cost to taxpayers, and contributions to the Park Service through our profit participation.

Now, further interest in this subject in the suit brought by YRT against the National Park Service regarding this contract, the U.S. Court of Federal Claims has commented that it was "troubled" by the points I have just discussed as to the manner in which the National Park Service treated Yosemite Park Services' offer. In contrast, there were several possible grounds for faulting YRT, but that this was "not so" regarding Yosemite Park Services.

In conclusion, Yosemite Park Services is the only offeror to meet all of the important key criteria. On balance, therefore, if a comparative analysis is now truly conducted, including clarification of ambiguities and other questions, we submit that the Secretary will be presented with a real choice in this important matter and that Yosemite Park Services will receive the award.

When you look at these facts, they jump out at you. This process has produced an excellent offer by Yosemite Park Services for the American people, offering an increase of over 650 percent from the MCA contract, offering a top-flight environmental concern, strong financially backed operators, an arts and education center at no expense to the taxpayers, and much more. We just need to be recognized for what we have already done.

Perhaps most important, Yosemite Park Services recognizes that Yosemite National Park is probably the most beautiful and picturesque location in the world. It is a showcase of all that is good with America. It is with this sense of deep concern and protectiveness that we wish the privilege of serving America through the operation of the concessions at Yosemite, and we hope that we will be allowed to fulfill promise.

Thank you for the opportunity to appear here today.

[Prepared statement of Mr. Read follows:]

**Oral Testimony of Randolph C. Read
President
Yosemite Park Services, L.P.**

**Before the Subcommittee on Oversight and Investigations
Subcommittee on National Parks, Forests, and Public Lands
March 24, 1993**

**The Honorable George Miller
and
The Honorable Bruce F. Vento
Chairmen**

Messrs. Chairmen, thank you for the opportunity to testify before these Subcommittees today, and to present the views of Yosemite Park Services regarding the Yosemite National Park Concessions Contract and the National Park Service's procurement process.

As you ladies and gentlemen are well aware, the Yosemite Concessions Contract is the largest and most important such concession contract in the history of the National Park Service. Over its contract term, revenues of the Yosemite concessioner will approach or exceed \$2 billion. Moreover, the process hereunder may well set precedents for future such procurements, both in terms of the provisions of the contracts involved and in the selection or procurement process itself.

Let me first confess to being a life-long Yosemite enthusiast, having practically worshiped the Park since I first became introduced to it through the great photographic works of Watkins, Muybridge, Adams, and others as a child. For almost four years now, our group has been studying and working on the possibility of bidding for this contract, long before MCA was a twinkle in the eyes

of Mr. Matsushita in Osaka. We have put together a group of professional and financial partners with the primary aim to help preserve Yosemite - not only over our lifetimes, but for future generations to come. And to do this all with the highest degree of concern and regard for the environment.

We view operating in Yosemite as a trust, more than a right or an opportunity for profit. At a time of increased concern over our national environment, the pristine and breathtakingly beautiful Yosemite must be cherished and nurtured -- not exploited. The Park, the mountains, the meadows, the rivers and streams, the wildlife, the trees, and the vegetation - they are the show here. The concessioner is there to merely accommodate the visitor's experience - not to interfere or interrupt.

We appreciate the opportunity to bid on this contract and we were pleased to have provided the National Park Service with the best bid and offer of all the potential concessioners that went through the process. However, for reasons we believe are unfounded, we were not awarded the contract, to the detriment of not only our group, but the American people as well. Throughout the process we were pleased to work with the Park Service and were most impressed with many of the Park Service individuals, and particularly with Superintendent Finley, who we look forward to working with if we are awarded this contract.

However, we must respectfully raise significant questions about and be critical of, the bid and selection process. The bid process was cumbersome, providing primarily raw data with little digested

material that would have encouraged more vs. fewer bids. Further, the Park Service negotiated transaction with MCA was most unusual and has resulted in reduced revenues for the Park Service because of the burdens that transaction places on the new concessioner.

Regarding the selection process, we do not believe that the Park Service performed the job intended and we do not believe that their process produced the best bidder owing to several issues addressed in more depth later in this testimony.

Specifically, the Park Service did not perform the comparative analysis of all responsible and responsive bidders as required by the National Park Services's source Selection Plan provided in the procurement documents. We believe this was due in part to the hurried and, regrettably incomplete, if not actually careless, evaluation process lasting only 10 days. The result of this flaw in the procurement process had a specific, negative impact upon the evaluation of my company. To top it off, one simple phone call could have clarified the only alleged problem found with our proposal and we would, therefore, have been shown to be the best bidder for this award. Strangely, a phone call was made to Delaware North for clarification, but not to us. That call to us should have been made to "clarify" the apparent ambiguity the Park Service allegedly found in our proposal. Indeed, such a call is required under the National Park Service Regulation NPS-48.

Of greater importance to these Subcommittees, however, is the negative effect this systemic flaw in the procurement process had upon the Secretary and the Department of the Interior. Instead of

winnowing down a large group of initial bidders to a smaller group of attractive and responsible proposals, this procurement and selection process eliminated all but one bidder. The Secretary thus was not presented with a genuine choice of concessioners; he was confronted with only one surviving bid and no real choice at all.

That was not the expressed intent of this procurement. Nor was it the necessary result. Even now, particularly given the opportunity presented by these hearings, we understand the new Secretary is reviewing this process and hopefully will avail himself to a responsible choice among attractive offers, which we believe should include ours. Specifically, in our case, that would mean the Park Service place only a phone call to clarify the one issue where we were allegedly found unsatisfactory; that is, with respect to the form of our commitment letters of \$12 million in equity for working capital - commitments from entities and individuals with a combined net worth of almost 100 times greater than this requirement.

In summary, therefore, I believe, that my company was not treated fairly and should be given the opportunity to clarify the Park Service's misunderstanding of our proposal which led to the elimination of Yosemite Park Services from the competition because of this one mistake on the part of the Park Service.

Secondly, if that is rectified, the Secretary will have the opportunity to make a responsible choice among bidders. In that event, and for many of the reasons I will state in more specific detail in this testimony, I believe Yosemite Park Services far

outdistances all the remaining offerors, including the proposed tentative awardee.

This is especially so with respect to the important Capital Improvement Fund, or CIF, contribution. Delaware North proposed a CIF contribution which, under the best circumstances, would only just meet the minimum 5% fee required by the National Park Service and which under the more likely scenario would, on its face, fail to meet that minimum by a factor of 10%. In sharp contrast, Yosemite Park Services proposed a percentage fee which would always meet the minimum and which could range up to 300 percent greater than the maximum offered by Delaware North. And yet this was ignored, and not even presented to the previous Secretary in the Park Service summary of all bidders.

We understand that Secretary Babbitt is now reviewing the entire process centering around this award itself - hopefully with a view to awarding it to the best bidder, which we believe is our company. We welcome and encourage that review.

A detailed review of all offers will reveal that Yosemite Park Services made the best offer and is the ONLY applicant that both (1) placed no limits on assumption of environmental liabilities and cleanup, and (2) always had a CIF contribution over 5%. No other bidder did this! And the Park Service failed to make this fact available to the Secretary.

Additionally, Yosemite Park Services is one of only two applicants that has made its concern for the environment and the Park of paramount importance, as exemplified by our proposed

inclusion of the Sierra Club on our Board of Directors and our proposed profit contribution to the National Parks through the Sierra Club. Indeed, the National Park Service has expressed its high praise for our qualifications and proposals in this respect. Of all the offerors, I believe Yosemite Park Services is unmatched in its environmental concern, except perhaps for our friends at the non-profit Yosemite Restoration Trust, which were disqualified on several other important criteria and therefore appropriately not considered further.

Despite the announcement by the National Park Service in the prospectus that selection of the best proposal would be determined by assessing the relative merits of all final Phase II applicants against the announced Evaluation Criteria, by process of elimination the Selection Panel chose Delaware North, not as the best overall offer, but by what they deemed to be the only remaining offer. This was wrong on its face.

Therefore, Yosemite Park Service specifically has submitted to and asked the Secretary of the Interior to review and re-evaluate its application of the entire process centering around this award. This included rectifying the nine errors we believe the Park Service made as outlined in my Exhibit herein.

If a newly constituted panel would objectively compare the six final offers made to the National Park Service, as we have done on this chart to my left, one can readily see that Yosemite Park Services has made the superior offer across the board. We were the ONLY applicant that met all six key criteria of (1) having a CIF

always at or above 5% (2) having no environmental liability limits, (3) having strong environmental credentials, (4) having its equity funding in place, (5) placing no significant conditions on its offer, and (6) assuming the MCA obligations. Comparing this to the other bidders we find:

Delaware North did not bid a CIF always above 5%.

TW Services (1) did not assume all environmental liabilities (2) placed various conditions on their offer, (3) failed to assume the MCA obligations, and (4) in the Park Service's opinion, may have LBO debt covenant problems restricting their operations.

YRT (1) had a CIF of ONLY some 40% of the minimum requirement during the all important first 4 years, (2) conditioned their payments to the Park Service on a profit participation, so if they run the concession like a non-profit business, who knows what the Park Service would actually receive, (3) placed restrictions on what environmental liabilities they would assume, (4) doesn't have the money, having raised only \$7 million of the required \$12 million, and (5) placed other conditions on its offer.

AMFAC (1) had the lowest CIF of all bidders, between 65% and 40% BELOW the required 5% CIF, (2) did not assume all environmental liabilities, and (3) placed various conditions on their offer.

California National Resources Management was apparently totally non-responsive in its submission.

As such, the best overall offer was clearly submitted by Yosemite Park Services. This is substantiated by the fact that:

1. Yosemite Park Services' partners are willing to not only contribute the \$12 million of equity required, but would contribute even more equity if necessary.

2. Yosemite Park Services has placed no limits on restrictions on the environmental liabilities we will assume.

3. Yosemite Park Services CIF contribution is always above 5% and in some cases up to 300% over Delaware North's. Further, we are willing to arrange for a \$20 million advance funding to jump start the capital improvement proces, if needed.

4. Yosemite Park Services has demonstrated its deep concern for the environment, as exemplified by the inclusion of the Sierra Club or other similar concern within its operations.

5. There are no significant conditions to the Yosemite Park Services offer.

6. Not only has Yosemite Park Services agreed to assume the MCA obligations, which some others have not, but Yosemite Park Services has developed an outstanding and creative proposal to reduce the carrying cost of the MCA debt, which we believe no other group has.

7. Yosemite Park Services has also developed other outstanding and unique proposals, including an arts and education center without cost to taxpayers.

Of further interest on this subject, in a suit brought by YRT against the National Park Service regarding this contract, the U.S.

Court of Federal Claims has commented that it was "troubled" by the points I have just discussed as to the manner in which the National Park Service treated Yosemite Park Services' offer. In contrast, there were several possible grounds for faulting YRT, but that this was "not so" regarding Yosemite Park Services.

In conclusion, Yosemite Park Services is the only offeror to meet all of the important key criteria. On balance, therefore, if a comparative analysis is now truly conducted, including clarification of ambiguities and other questions, we submit that the Secretary will be presented with a "real choice" in this important matter and that Yosemite Park Services will receive the award.

When you look at these as facts, they jump out at you. This process has produced an excellent offer by Yosemite Park Services for the American people - offering an increase of over 650% from the MCA contract, a top flight environmental concern, strong financially backed operators, an arts and education center at no expense to the tax payers, and much more. We just need to be recognized for what we have already done.

But perhaps most importantly, Yosemite Park Services recognizes that Yosemite National Park is probably the most beautiful and picturesque location in the world. It is a showcase of all that is good with America. It is with this sense of deep concern and protectiveness that we wish the privilege of serving America through the operation of the concessions at Yosemite, and we hope that we will be allowed to fulfill that promise.

I thank you for the opportunity to have appeared before you today.

EXHIBIT 1

EXHIBIT

Yosemite Park Services, L.P., presents the following considerations:

1. That the alleged unsatisfactory finding by the Selection Panel was based upon a complete misunderstanding of the Yosemite Park Services and should be reversed.
2. That the Park Service easily could have and should have, clarified any question or alleged ambiguity as to the YPS financial commitment.
3. That because YPS had specifically identified the sources of its funding in Phase I, an approval of such financial commitment in Phase I should be deemed satisfactory in Phase II, since no further fund placement activities were required thereafter.
4. That Yosemite Park Services sought and received a specific, authoritative assurance and confirmation from the Park Service that it would suffice to submit in Phase II the representation as to financial commitment that it had made in Phase I.
5. That any changes in solicitation requirements regarding the Phase II evaluation should have been clearly notified to the offerors.
6. That if the form of commitment letter was of such paramount importance to the Park Service, they should have specifically provided a format for it to all offerors.
7. That the evaluation process was too hurried and produced careless errors which negatively affected the presentation of our offer to the Secretary.
8. That the Park Service should not have made its selection decision by the process of elimination and should have made a clarifying phone call to Yosemite to insure that at least two offers were available for review by the Secretary.
9. That the Delaware North bid was deficient on its face because it dropped below the required 5% CIF in certain circumstances.

NOTES TO EXHIBIT 2

1. We understand that the Delaware North balance sheet indicates liabilities in excess of assets for a negative net worth which would seem to call in question the NPS conclusion that Delaware North met the financial criteria.

2. The NPS questions TW Services as to whether debt covenants in its recent leveraged buyout might restrict its ability to contribute capital.

3. The NPS questions the Amfac financial stability.

4. We treat the final negotiation of the concession contract as not significant.

5. We do not know the full significance of the conditions Delaware North placed on the contract.

6. We do not know what conditions these offerors may have placed on the assumption of the MCA obligations, or whether such conditions are significant.

Mr. VENTO. Thank you, Mr. Read, for your testimony.

The value of the YPC, or the Yosemite Park and Curry Company, is basically about \$50 million. The remaining amount that was negotiated in the purchase agreement is accrued interest, which obviously has to be paid on September 30.

So, that is one of the points I wanted to bring up, but I do think it is a good point to recognize, and it does raise new questions I think in my mind concerning how much of that is basically for the name of Yosemite Park and Curry Company and the ongoing sort of business value in terms of reputation and so forth as opposed to the actual payment for what is known as possessory interest. So, I think we do slide into looking at more of the tangible value than anything else in this instance.

I think we can get into a lot of details with regard to this. Mr. Read, one of your assertions is that you, in fact, accepted the full liability, but yet the Park Service somehow and the evaluation team read into the documents or the bid that it was not accepted. Do you understand the basis for the misunderstanding that apparently arose here?

Mr. READ. We found a conflict, number one, in the summary versus the detailed evaluation of us. The Park Service in the detailed evaluation essentially said we do not know whether they are assuming it or not. We have assumed that they are. Now, we were never given an opportunity to explain that in further detail.

The reason for that is there are certain environmental mitigation expenses that may be tied into the CIF and some that are not. As an example, if you are improving a building and taking out an underground storage tank at the same time, you have a crossover. We specifically suggested in our application that we did not want to make that decision in a vacuum. We want to work with the Park Service to determine where the priorities are where things need to be sent. We thought that we had outlined that clearly in our application form. Apparently the Park Service missed it in their hurried rush to get through with this process.

Mr. VENTO. Well, maybe Mr. Green or Mr. Martyr would want to respond to this.

You made the assertion that there was never any full evaluation of all the bids that were made. Apparently, on a preliminary basis, if they did not pass a certain threshold test, whether it was adequate financial basis in order to provide the working capital or to sustain the commitment that was being made, that it was questionable that that entity—and based on the liability question that has, of course, been chewed upon quite a bit today—that then a full evaluation of the entire bid was not made.

Mr. Read, your assumption was that, in preparing these documents, a full evaluation would be made. Is that correct?

Mr. READ. Yes, it was.

Mr. VENTO. Please elaborate. I guess I am trying to get beyond the written testimony and say, Were you given indications of that? What was your expectation once you submitted the bid?

Obviously, they were operating within a time-frame problem here. I guess if you do not have deadlines, you never get anything done. That is the other side of it. As a former teacher assigning papers for people to do, you have to have deadlines.

Mr. READ. Understood.

I would like to defer a certain aspect of this to Mr. Green who was involved in the lawsuit because some of our information came out from that lawsuit as to how the Park Service prepared their evaluation. I believe that Mr. Davis this morning elaborated even further saying that we just stopped at that point when we got the unsatisfactory.

Mr. VENTO. Well, I do not know if that is exactly what he said, but I think that there was obviously an abbreviated or——

Mr. READ. Yes.

Mr. VENTO. Obviously, they went beyond that. They did not continue a dialogue or communication with you at that point.

Mr. READ. We were not rated unsatisfactory regarding our environmental issues, by the way. That was something that we were deemed to be satisfactory by the Park Service.

Where we were rated unsatisfactory is they did not like the form of our commitment letters. Now, we have commitment letters from our limited partners who have net worths of almost 100 times what the requirement is of this \$12 million. In six different places in our application, we specifically state these are firm commitments. They are in there. They have signed up. We are ready to go. There is a seventh place in the application where, in looking back and reading it, one might draw a differing opinion as to how firm those commitments were.

The Park Service never went to clarify it. If you said it six times, yes, they are there, and even giving them the benefit of the doubt that it raises a question on the seventh, you would say, well, why are you saying it differently here.

More importantly than that, we specifically inquired of the Park Service. I personally called the Park Service in early November, the contact individual, and asked him what do you want in regard to these commitment letters, and we got back and answer that was very noncommittal. We don't know. We need compelling evidence. We kind of got the SOR read back to us. We said, well, we will give you whatever you want. Well, we don't know exactly what it was. We said, well, we are going to send you letters similar to what we sent before, and we were told that that sounds fine.

Mr. VENTO. I don't know, but I think that they probably did not want to tell you how to write it. That was part of the guidance. Then it turns into a minimal requirement.

I was not trying to get into the specifics of it, but what I was trying to outline is what your expectations were, or your understanding. Was there an understanding, Mr. Green, that eventually once this bid was submitted, that there would be some dialogue back and forth to clarify various provisions of it? Was that the understanding, or was it basically a bid that would have to stand on the representations made in the document that was submitted as the bid?

Mr. GREEN. Well, you have asked two questions. Let me answer the first one first and then the second one. The first one was did we expect it to be a comparative evaluation and did we think it was not was the second one. Can I answer the first one?

Mr. VENTO. Yes.

Mr. GREEN. We certainly expected it to be an analysis of each of the criteria, and they would not tell us what the weights were. They did not say which were most important, but they did indicate primary was management experience, financial capability, and responsiveness to the SOR, which is kind of everything else. The amount of fee you paid was supposed to be secondary. I knew that from the law.

You asked did they make a comparative assessment of each criteria, and the answer is unequivocally they did not. They went through the system of saying satisfactory, and they found everybody satisfactory in 13 criteria, with one exception of a marginal one and someone else on insurance problems. Did they say which was the best? Did they give them a score of 1 through 10? Did they do anything that said these guys were strong on this, these guys were strong on that, and lo and behold, their fee is low or, lo and behold, their fee is high, but that is secondary? Here is a case where their financial commitment is not entirely clear, maybe we should call.

Or in our case, we gave them assurances that we had our \$7 million. You have to remember the financial data was released up until October 29, including environmental cleanup costs. We had to raise money from our investors between basically November 17, when we finally submitted it, and earlier than that, October 29. We worked on it back to June. We were raising new money. We said we have the \$7 million. We have applications out to others. We will get the other money by the time the contractor is selected, which they had announced to be in January. In fact, we had our \$12 million by January. What did they do? They announced it on December 17, one month after they received the bids. They caught us up a little short.

The other question was did we expect to have any contact or communication back and forth. I also made a call to the Park Service, some of the people that were here, and I said, well, what about the environmental cap? Some of our investors are nervous about putting up all their assets for an unknown liability. They said, well, that might be considered a conditional response. I said what does that mean. Well, it means if other people submit it without that, they may be in a better position. I reported that to my board, and I understood that. I said this may be a weakness. We may be faulted for this. I never was told we will be excluded for it, and if that were the case, I would have perhaps objected differently.

Mr. VENTO. Well, Mr. Green and Mr. Read, I do not know if you have had the dialogue back and forth with the Park Service prior to submitting the bid and I don't know after the bid. These conversations you are talking about, Mr. Green, were subsequent to submitting the bid. Is that right?

Mr. GREEN. No, sir. They were prior to submitting the bid.

Mr. VENTO. Prior, okay.

Well, that was the concern I had, that the expectation was that there would be a continuing dialogue after submitting it, and there was not. Is that your point, Mr. Green?

Mr. GREEN. Yes, it is in this sense, that the regulations say they will take the information they get. If it is good enough, they can make a choice right then. I do not deny that, but it also provides

for best and final offers and clarifications. I certainly assumed if they had these many bids for a \$2 billion contract, that there would be some elaboration questions and resolution of issues.

Mr. VENTO. Well, Mr. Read, your allegation is that there has been a violation of applicable regulations in connection with a matter of phone calls, and the same sort of suggestion or allegation has been made by Mr. Green. Is that also an issue you are raising in the pending litigation, Mr. Green?

Mr. GREEN. Yes, it is.

Mr. VENTO. Mr. Read, you obviously are not involved in this. I guess I should not really even pursue the issue of whether there were other phone calls then after the fact because it seems to me that it involves this other question.

Mr. READ. I can answer very quickly. There were no phone calls after the fact.

Mr. GREEN. Sorry. This phone call during the evaluation process was after the bids had been opened, after the evaluation process was in—

Mr. VENTO. I know. That is the allegation that is made.

Mr. GREEN. Regarding your question of whether we expected dialogue, we did not know. The Park Service in their procurement document specifically said we reserve the right to ask for clarification if we need it.

Mr. VENTO. So, they did say that. Did they, for instance, in either case ask for further documentation or information—

Mr. READ. They did not.

Mr. VENTO [continuing]. Without getting into the merits, but they did not.

Mr. READ. We did not hear from the Park Service until essentially they announced the award of Delaware North. They gave us a courtesy of telling us before we read it in the paper.

Mr. VENTO. Some of the questions we have raised today seem to imply that the SOR basic document and the contract have some differences, that is to say, than what they were initially purported to be. They may be minor differences. They may be major. You obviously imply the percentage difference question that is coming up.

Really, do you think that some of the terms of what were purported to be requirements for the bid have now been changed or about to be changed in the contracting procedure that are material in nature, Mr. Green, to the bid?

Mr. GREEN. Of course, we have not seen the contract. It was the draft contract.

Mr. VENTO. No, none of us have, but we have seen the model contracts. We have noticed that certain SOR requirements that were in the SOR are not in the model contract now.

Mr. GREEN. I think you are more expert on that than I am, sir. I have not examined the contract.

Mr. VENTO. If there are such differences, would you suggest that they may be material and really cast a further shadow over the bid process that you were engaged in?

Mr. GREEN. I certainly would, sir.

Mr. VENTO. Mr. Read, do you understand my question?

Mr. READ. Yes, I do.

Mr. VENTO. It is kind of convoluted.

Mr. READ. The Park Service has announced publicly that they are negotiating contracts with Delaware North. We do not know whether they are substantive, material or whether they are inconsequential in nature.

Mr. VENTO. Well, you have heard the hearing this morning. You can make a judgment based on it as I have to make a judgment based on it. What did it sound like to you? Did it sound like a different proposition than what you were bidding on at that time?

Mr. READ. Yes. They do appear different.

Mr. GREEN. I would say, for example, when he announced that they are going to negotiate the fee. Instead of being either 4.5 or 5, they are going to have a graduated fee, depending on the working balances. That is a rather interesting proposition that I did not know about. Those are the kind of things that perhaps should take place, but every bidder should be allowed to have those discussions and decide what they can do to get the best offer to the Government.

Mr. VENTO. You think those types of refinements really should have been part of the bid process, and the contract should not have been awarded and thrown to one particular bidder at that particular time, but that discussions should have been permitted to go forward.

Mr. GREEN. There is no question in my mind you would have had a better contract and you will have a better contract.

Mr. READ. There is already provision in NPS48 for clarification. The clarification procedures require that if they talk to one bidder for clarification, that they are required to talk to all bidders for clarification. They did not do that.

Mr. VENTO. Well, I have to look at this in the sense that everyone would have done something a little differently if they knew what the other person was doing. So, there is that element of question in my mind, and I do not know that it can be satisfied.

Mr. READ. Right, but we did not need that with our bid. We just needed them to clarify this misunderstanding that they apparently seized on in going through our application.

Mr. VENTO. Mr. Chairman, we have a long list of witnesses. Thank you.

Mr. MILLER. Well, you did a good job.

I think I am sort of in the same vein here.

Mr. Green, let me ask you. I am not sure I understood you correctly, but you mentioned at some point in the beginning of your testimony, when you were responding to what had been said earlier today by the previous panel, some question about when the environmental liability was known or discussed around the decision on the price of MCA. Can you tell me what you said there?

Mr. GREEN. Yes. What I said was my understanding is that at the time that the price of \$49.5 million plus interest, which I consider a price of \$62 million, on January 7, the Government, who basically agreed on that price along with the Park Foundation, had no knowledge of the value of the environmental liability, number one.

Mr. MILLER. The suggestion was made by the previous panel that that was, in fact, part of the negotiations around that price. You're saying that is not so?

Mr. GREEN. My understanding is that it may have been examined between January 7 and October—whenever they signed the final agreement. The price did not change. I also, as I said to you, asked for any information the Government had on the environmental cost of cleanup, and I was told they did not have any.

Mr. MILLER. You asked for that when?

Mr. GREEN. I asked for it—

Mr. MILLER. In putting together your proposal or—

Mr. GREEN. No. I asked for it back in July when we had our first meeting with the Government. All the contenders were there, and we all said can you give us any information on the environmental cleanup. The answer was no. The question was put to the Curry Company. The Curry Company said no.

Let me add one other thing about timing. In 1990 the California State Regional Quality Water Control Board had a meeting with the Curry Company and the Park Service and said you have 25 tanks. I want them cleaned up and I want a schedule for it. They basically did a little bit of work. Nothing was done.

Finally, last August, when they announced the terms of the new contract and the new transfer, I phoned them up and I said, you know, the next concessioner has to take that liability. Oh. They had a meeting then in December, and finally in January of this year, they got the Curry Company to agree to clean up 2 of 9 water contaminated tanks in the next 6 months, but the rest of them go to the next concessioner.

I think this is an important issue for the panel in terms of other concessioners in national parks. The Park Service has to get them to clean up the contamination now, take it out of their profits, rather than take it out of some future contribution to a fund.

Mr. MILLER. You mentioned also that this unlimited liability was, in fact, only limited to the equity put into the deal. Is that correct?

Mr. GREEN. Yes, sir. The judge said in examining this question, that what is unlimited liability, the same question you asked. The answer is that Delaware North set up a subsidiary, capitalized at \$12 million and that is the extent of their liability. Every bidder had to put up \$12 million in equity, and it is not clear that the parent of the subsidiary will be liable for the obligations of its sub.

Mr. MILLER. Well, if you create that chart, how does that impact these offers in terms of what liability is assumed?

Mr. GREEN. Well, my understanding would be I guess, if I were running the process, that I would announce that we estimate the cleanup liability of \$12 million, and that is what we are going to ask you to put in your fund, perhaps even \$1 million a year or \$2 million the first year, whatever the Government thinks is reasonable to clean it up fast. Then I would say to the extent it exceeds that—

Mr. MILLER. Let me—

Mr. GREEN. Sorry.

Mr. MILLER. Let me just ask you to address the offer. What is your statement as to what the real liability of Delaware North is under this submission they have made?

Mr. GREEN. The liability I presume is limited to the amount of their equity capital at risk.

Mr. MILLER. And what is that?

Mr. GREEN. \$12 million.

Mr. MILLER. That is the same as yours, Mr. Read?

Mr. READ. No, sir. We would disagree with that analysis. By capping the liability an offeror, essentially everybody except Delaware North and us, knows exactly what the extent of their maximum liability and anything above that is going to be the Government or MCA or whoever they wanted to assume it. While I may have only \$12 million initial capital in a project, I have, number one, my profits and retained earnings which may be in it.

Number two, if I have unlimited liability, I am going to protect my \$12 million investment. Now, I do not have a requirement to invest more, but I certainly have a vested interest. I have the future profits of the remainder of the concession contract if, say, the liability went to \$20 million.

By the way, we have estimated it is more like \$15 million, rather than \$8 million. We may be a little conservative, but that is the estimate that we have used internally.

So, I am going to protect my \$12 million, and unlimited liability clearly is different than capping.

Now, I agree with the line of questioning that you had with the Park Service earlier today, Mr. Chairman, that there is a value to that. If it is a \$100 million liability out there, there is a big value to having unlimited liability, although at \$100 million, I am not sure how much I am going to protect my 12 million bucks. But if I had a \$20 million exposure, you can be damned sure I am going to protect my \$12 million. I am going to put more equity into that transaction to make sure it is protected, and that is value to the people of America and the Park Service. If it is capped at \$12 million or \$6 million or \$14 million or wherever it is, that's it. Everything else goes over there.

Now, what that exact liability is is one question. The second question is should it have been an obligation of MCA in this transaction and had effectively Matsushita gotten the advantage of that, I think yes.

Mr. MILLER. Let me ask you this, Mr. Read. Your contention is that you, in fact, were satisfactory and qualified on all criteria?

Mr. READ. Yes, sir. We believe that we submitted pursuant to our discussions with the Park Service representative—we were only classified unsatisfactory on one issue, and that was the form of our commitment letters. We gave the Park Service exactly—

Mr. MILLER. They have characterized the form, what you offered then, as nothing more than an option to bid on the contract.

Mr. READ. That is correct, and we believe that is a misunderstanding. We took the exact language of the Park Service, which they have used not only in the SOR, but in their press releases subsequent to the tentative award of this, that they are going through final negotiations of the contract with Delaware North or the potential concessioner.

Mr. MILLER. What was the process they went through to determine whether or not you had the financial wherewithal to maintain this bid?

Mr. READ. We don't know. We know, as an example, in the write-up they mischaracterized a small item. They categorized the net

worth of one of our individuals as his total assets. His total assets are probably \$15 million versus a net worth of dramatically more than is required for this. So, it is an example of how they hurried through. We do not know what they did to qualify. They never called us. They never asked us for additional information. They just said they did not like the way we sent in our commitment letters.

Mr. MILLER. I think both of you have suggested that rather than get to the best qualified bid, it's your characterization that what they got to was the last standing bid.

Mr. READ. Yes, sir, exactly.

Mr. MILLER. You were winnowed out for a variety of reasons.

Mr. READ. In your case, you are suggesting that the basis on which you were winnowed out was, in fact, a misunderstanding. Had they properly looked at the letters of credit, they would have found that you had the wherewithal to meet the \$12 million threshold. Correct?

Mr. READ. Yes, sir. We would have provided the Park Service with whatever requirement they wanted. All they had to do was tell us what they wanted. If they wanted us to put a pile of cash on the table next to them, we would have done that, but they never gave us any indications what to do. We told them what we were going to do, and we were told that that would be sufficient until we get the evaluation back and we are found unsatisfactory.

Mr. MILLER. Let me ask you. You were presenting yourself as a limited partnership. Is that correct?

Mr. READ. Yes, sir.

Mr. MILLER. And Delaware North was presenting itself as a corporate offeror.

Mr. READ. Yes, sir.

Mr. MILLER. Do you know the process which the Park Service went through to determine that Delaware North had the financial ability to maintain its bid as opposed to you?

Mr. READ. We know a little bit of that. Clearly the Park Service was not prepared to review partnerships formed for the purpose of bidding on this contract. All their transmittal letters, their requirements all seemed to be submit your balance sheets, submit your operations.

I would like to defer to Mr. Green who again, through the process of the lawsuit, has learned a little more about that. But second-hand we were surprised that apparently the balance sheet of Delaware North was one that would certainly call that process into question, but I would defer to Mr. Green.

Mr. GREEN. I will just give you one or two sentences which we learned in the open proceeding. The Park Service had said I think in the letter from Mr. Davis, we looked at their balance sheet and they had enough money to provide the equity. I do not really know much more than that. The lawyers asked the question, well, were they going to put it up in cash? Their net working capital was not that strong; that is, the current assets and current liabilities were not in themselves available to finance this \$12 million.

So, I do not know what the Park Service did to determine that because they had a balance sheet, and perhaps they wrote a letter

saying I commit \$12 million. I don't know what they did. So, I really can't answer much more than that.

Mr. MILLER. Mr. Davis, can you respond to that, how that determination was made, or Mr. Hanslin?

Mr. DAVIS. I would like Mr. Hanslin to address that.

Mr. MILLER. Fine. Would one of you mind sort of moving to the right or the left there? You have to provide him a chair. It is a trick, Mr. Hanslin. Don't sit down. [Laughter.]

Mr. HANSLIN. I get some deference as a Government lawyer.

The Delaware North proposal—by the way, the SOR stated that, and these gentlemen have properly alluded to it—that you are supposed to submit a complete offer. We are going to make our decision based on the offer submitted. We might choose to go back out for more, but there is no guarantee of that. The obligation of the offeror is to tell us everything we needed to know with that application. There was not any question or ambiguity about that.

The Delaware North Corporation submitted its certified audit of its corporate books—I will probably get mixed up with the accounting terms—but showing a bottom line that far in excess of \$12 million was available in that company as of that day, and that Delaware North committed to make \$12 million of that available for the company without any conditions. That was the basis upon which we decided Delaware North had provided us with compelling ability to provide the money.

Mr. MILLER. The others did what?

Mr. HANSLIN. Do you want me to go through all of them, or just the—

Mr. MILLER. No. I was just trying to determine what is the evidence that you—

Mr. HANSLIN. The YRT Services Corporation told us in narrative form that they had commitments for \$7 million. There was no documentation of that. The commitment letters were not provided. They just stated we have \$7 million, and they said we are going to raise the rest later. There was no evidence or documentation or substantiation as to how they were going to raise the money or that they could achieve it.

Mr. MILLER. Did you have reason to doubt it?

Mr. HANSLIN. Yes.

Mr. MILLER. Why was that?

Mr. HANSLIN. Because they knew since March or April that we needed \$12 million, and come November, they only had \$7 million. So, one has to say that they only got \$7 million in that period of time. How do we know they will be able to get the rest?

Yosemite Park Services submitted absolutely no information verifying that they had money. They said they had money, and they may have had money. There was no information provided. The proposal stated that the limited partnership was making the proposal, and I forget the exact words. But it said, oh, by the way, this proposal is strictly subject to a discretionary decision by an individual who wasn't party to the proposal. That individual was the person identified, at least in the first instance, as providing the money. There was no information provided. They provided a one-page xerox of *Forbes Magazine* which said that this individual had money, had a certain amount of money. There was no documenta-

tion whatsoever in the proposal substantiating that money was available, and the proposal was conditioned on discretion of an individual who wasn't party to it. If we had awarded the contract to them, that gentleman could have said thank you anyway. I don't like and it walked out. That was contrary to the terms of the prospectus.

Mr. MILLER. Mr. Read.

Mr. READ. That is not what we did. Number one, we did submit a balance sheet just like Delaware North, but as you alluded to, it is a newly formed company. It's a pro forma balance sheet. We are not in existence, so we submitted that.

Number two, we submitted a firm commitment of the applicant that they would do that just like Delaware North. We submitted commitment letters from the limited partners, in specific one individual that has a net worth of approaching \$1 billion. That is widely known and known throughout the country. If there was any question about it, it should have been raised in the early November phone call that I had with the Park Service asking them what they wanted. Had they wanted a letter of credit, we would have provided it. If they wanted an escrow account in a bank, we probably would have provided, although we would argue that everybody else would have.

The language in the letter was as I have stated earlier. It was not conditioned to his approval. It was a mere discussion of the Park Service's SOR which said the final contracts are subject to our approval and the final negotiation. We said this individual was committing the money—if the Park Service said, oh, by the way, we want you to build a new \$100 million of employee housing in the contract—and it is not totally ludicrous because it's on the table. The Park Service wants \$100 million of employee housing taken care of somehow. If they slipped that in and said, oh, we are taking this proposal and now making it a firm part of our contract, now I have my partners out there who have to agree to accept unilaterally a material change to the contract. We did not think that was fair, nor did we think that was what the Park Service intended. So, our language was merely a mirror image of what the Park Service said. We have final approval of the contract. We said fine. We have a party.

Regarding the background on the limited partner, he is fully disclosed. His company is fully disclosed. There is a background information sheet. He is one of our directors. There is ample information on that.

Again, it seems as if the conclusion was reached first. Let me make my decision, and then let me go back and come up with a reason for why not to include these people because notwithstanding that we understood that all the information was supposed to be in the application, we thought we had it in there. I specifically made a phone call to verify what they wanted, and I was given the instructions as what we included, only to be told 4 or 5 weeks later that no, that won't count.

Mr. MILLER. Mr. Hanslin, you do not see this as a question of whether or not that individual and/or the limited partnership has a right to agree to the final terms of the contract.

Mr. HANSLIN. No. I don't read the provision and the Park Service did not read that provision. I have it back here somewhere. I could read it to you. It says that the acceptance of this contract is subject to the sole discretion of another individual who wasn't party to the offer. That makes that an option in the view of the Park Service and it wasn't a binding commitment.

Mr. MILLER. What happens during the current negotiations if Delaware North walks away from the contract?

Mr. HANSLIN. They cannot and neither can we. This is a misapprehension as to what is happening. In the SOR, it says that you have to accept the contract as written, without change. If you make this bid, you take it as is.

Mr. READ. We were willing to do that.

Mr. HANSLIN. All right, fine.

The negotiation is, believe me, only on the most nitpicking level, and the only substantive result of the negotiations to date has been a concession to the Government, not to Delaware North, to us, about the difference between the 4.5 and 5 percent, which we alluded to. Under our regulations—and I will be happy to say this—if we make a material change in the terms of that contract to the benefit of the concessioner, we cannot go ahead and award it. We would have to readvertise it. We are not doing that, and it will not happen that way.

Mr. MILLER. How do you characterize the negotiations around the 5 percent versus 4.5 percent?

Mr. HANSLIN. It is a negotiation that is of direct benefit to the Government. As I mentioned—and you brought up the question—what if there is only a \$10 difference, would they get 4.5 percent? They agreed no. It would just be a pro rata as it went down to the 4.5 level ceiling. So, all it did was give a concession to the Government in that instance.

Mr. MILLER. So, what are you saying? They had a right to stand with the 4.5 percent?

Mr. HANSLIN. If the difference is there, yes, if they get to that point. In other words, they are saying that the 4.5 percent was calculated on the basis of something like a \$5 million or \$6 million negative on September 30. We said, well, look, what if the negative is only \$2 million. You are not going to take the whole 5 percent, right? They said right. We will agree to take it pro rata. But if it gets to the entire 5 percent, they are responsible thereafter.

Mr. MILLER. The SOR said that if you are under 5 percent, it would likely be considered to be insufficient or something like that.

Mr. HANSLIN. That is correct.

Mr. MILLER. What was their real offer? Was their offer 4.5 and then you ratcheted them back up to 5 percent, or was it 5 and they have ratcheted you back down to somewhere between 4.5 percent?

Mr. HANSLIN. Their offer was 5 percent if the current assets equaled current liabilities, and it was 4.5 percent if current liabilities exceeded current assets on September 30.

Mr. MILLER. How did they know to do that when nobody else did?

Mr. HANSLIN. From their due diligence.

Mr. MILLER. Pardon?

Mr. HANSLIN. From their due diligence effort.

Mr. MILLER. So, the other guys who did that decided it would be between 5.2 and 5.8 percent.

Mr. HANSLIN. I cannot speak for the other offerors. All offerors were aware of the—

Mr. MILLER. No. But if you read the SOR, wouldn't you sort of assume that the floor was 5 percent?

Mr. HANSLIN. No, it did not say that. It said it is not likely to be—

Mr. MILLER. Yes, right.

Mr. HANSLIN. It wasn't a floor.

Mr. MILLER. So, 3 percent would be better? No. It said if you are less than 5 percent—

Mr. HANSLIN. It said we are not likely to accept an offer that is less than 5 percent. That is correct. We took an offer that may be 5 and it may be 4.5 percent.

Mr. MILLER. No. I understand that. We have to go back to the morning and start over.

But that feeds into this notion that you can have these broad categories of satisfactory and unsatisfactory. What is the criteria? You get winnowed out. Assuming there is a legitimate difference of opinion on the letter of credit, you can get winnowed out rather easily, and clarifications are very hard to come by.

Mr. HANSLIN. About that characterization of the panelists, Mr. Chairman, I do not believe the Park Service agrees that that is how the process worked, and by the way, that is an issue in the litigation. A lot of these allegations that have been made this morning have been alleged to the judge.

Mr. MILLER. No. I understand.

Mr. HANSLIN. I believe the judge is going to rule in our favor on those points. I do not think you should take it as a given that it has been characterized is—

Mr. MILLER. I do not take it as a given. I take it as a question of the decisions on the basis of which people were winnowed out, and were they winnowed out in a gross fashion, as opposed to being winnowed out at the margins where there was really a distinction between the offers.

Mr. HANSLIN. The Park Service followed its regulations for evaluating concession offers. The regulations state—and everyone at this table is aware of those regs. They are published in the Code of Federal Regulations—that in evaluating a concession offer, the Park Service first looks to the principal factors, which is the background of the company, its financial capability, and its responsiveness to the terms and conditions of the prospectus. You only go to the secondary factors if you have two or more people meeting the principal factors.

On this occasion, we only had one company that met those principal factors. Under our regulations, we were not even permitted to go further than that. That is one of the issues the judge is looking at.

Mr. MILLER. Well, that is because you made an interpretation. You may be quite proper in that interpretation. But the winnowing factor as to that primary consideration was because you made an interpretation that that was not really a letter of credit. That was an option.

Mr. HANSLIN. Well, that is correct. That was actually the deficiency in this regard of the Yosemite Park Services Company was that it was inconsistent with the terms and conditions of the prospectus, which it was supposed to be a firm, unconditional offer. Their offer was conditioned on approval or acceptance in the discretion of an individual who was not party to it. It was very difficult for the Park Service to say we had a firm offer in those circumstances.

Mr. MILLER. Excuse me. We have to have a recess because I have to run for a vote or I am going to be late. I will be right back.

[Recess.]

Mr. MILLER. If we can just have order for one second. We have another vote, and I think if we have remaining questions, they are not questions that we ought to require you to hang around for. We can get them to you quickly in writing rather than make you hang around. I do not quite know what is going on on the floor. I thought we were done voting for a while, but we have another vote and may have votes after that. So, let me thank this panel. You are obviously welcome to hang around, but if we have additional questions, we will fax them to you right away and then get back to you.

I think also with the Park Service, this has gone on longer than even Vento and Miller had anticipated. Knowing one another's habits for brevity, we thought we would be out of here at noon. Come on. Give me a laugh. Come on. I am dying up here. [Laughter.]

The Park Service was nice enough to hang around too, but I know there are some problems with flights. Obviously, this panel has raised questions about the previous testimony. We will go through that. I suspect that the next panel will do the same. We would clearly reserve the right to get very quick turnaround on these questions that we might have as a result of the next panel's testimony.

This panel is dismissed. The next panel is holding. I am going to vote, and the Park Service can leave should they desire to do so because of other scheduling. Is everybody clear? Okay.

[Recess.]

Mr. VENTO. Let's get started again, if we can.

I would like to thank the last panel. We are calling the next panel at this time, if the Chairman hasn't already done it. So, we would ask Ms. Debbie Sease from the Sierra Club; Dean Malley, the Yosemite Coalition; Paul Pritchard, who is of course with the National Parks and Conservation Association; and Ron Tipton with The Wilderness Society. I think that the nameplates have been put forward. We very much appreciate the patience of this last panel.

We know the group of witnesses and their organizations have spent a lot of time working out the details and focusing on this particular issue. I know that their testimony will be useful, and has already been I think reflected in some of the questions and answers that have been raised by members of the panel.

Therefore, let me call Ms. Sease. Would you present your statement at this time? I would remind all the witnesses that your statements have been made part of the record by request of Chairman Miller, and feel free to proceed as you are comfortable. Debbie.

PANEL CONSISTING OF DEBBIE SEASE, SIERRA CLUB; DEAN MALLEY, YOSEMITE COALITION; PAUL C. PRITCHARD, PRESIDENT, NATIONAL PARKS AND CONSERVATION ASSOCIATION, ACCOMPANIED BY RICHARD BUSSE, ECONOMIC CONSULTANT; AND RONALD J. TIPTON, DEPUTY VICE-PRESIDENT FOR FIELD PROGRAMS, THE WILDERNESS SOCIETY, ACCOMPANIED BY JOAN REISS, REGIONAL DIRECTOR, CALIFORNIA/NEVADA OFFICE, THE WILDERNESS SOCIETY

STATEMENT OF DEBBIE SEASE

Ms. SEASE. Chairman Vento, thank you for the privilege of testifying before you at this hearing regarding the future Yosemite concessions contract. In the interest of time, I will discuss only the flaws in the contract review process. My written testimony has a more complete discussion of the contract.

The Sierra Club has always been deeply concerned with issues involving Yosemite, the place where our organization was founded more than a century ago. We believe that the 15-year Yosemite concessions contract will set a precedent for future national park contracts. We ask your committee to encourage Secretary Babbitt to revisit the award of this contract to guarantee to the public that the park's natural resources and the quality of visitor experience will be undiminished during the next 15 years.

Sierra Club believes that the proper groundwork was not laid before the National Park Service selected Delaware North Companies, Incorporated as the next concessioner for Yosemite National Park. The next Director of the Park Service should have an opportunity to review the contract that he or she will have to enforce. Proposals were evaluated in a mere 2 weeks, significantly less than is usual for such decisions. Unless the decision making process is reopened and reexamined, the public cannot be confident that the best concessioner was selected from among the six applicants.

The 16 criteria used by the National Park Service to evaluate the proposals included criteria covering resource protection and interpretation, but there were no representatives from either of these divisions on the evaluation team.

All of the applicants were rated satisfactory on the resource protection and interpretation criteria. The only reasons proposals were rejected was on financial grounds. Since the financial information was the only thing the National Park Service used to distinguish one applicant from another, the award of the contract was essentially based solely on financial grounds. This is contrary to the National Park Service's own regulations.

We would argue that the financial criteria should not have been used by the National Park Service as the sole distinguishing criterion. Public Law 89-249 guarantees the future Yosemite concessioner a reasonable rate of return. If after 4 years, the concessioner is not making a reasonable rate of return, the Park Service will negotiate a lower fee for the next 4 years.

One of the factors that might affect the next concessioner's reasonable rate of return is the cost of toxic cleanup. If the cleanup costs more than the projections indicate, our reading of this is that it will cut into their reasonable profits and that the Park Service would then renegotiate the concession franchise fee downward.

While the up-front franchise fee proposed by each applicant is important, since it can be renegotiated, it is arguably far less important than those elements of the proposal which will endure the entire 15 years of the contract.

Sierra Club questions the decision to base the contract award on the fact that one bidder offered to accept unlimited liability for the toxic cleanup. In fact, what Delaware North offered is not really unlimited liability because if the cost of the cleanup causes the concession's profits to go below their reasonable level, then the concession's franchise fee will be negotiated downward to compensate.

When the National Park Service evaluated the bid proposals, instead of using a weighted point system, they judged each element of the proposal satisfactory, marginal, or unsatisfactory. This course grading system prevented more detailed comparisons of each individual element of the competing bids. A point system of evaluation would have been preferable and would have avoided the automatic elimination of five of the six bids on purely financial grounds.

Sierra Club recommends the National Park Service reopen the contract process by soliciting amendment offers from each of the applicants which was judged responsive. Each of the responsive bidders, including Delaware North, would put together an amended proposal. Then a National Park Service evaluation team would look at these bids and select the best one.

This method has several benefits. The Clinton administration officials would have the opportunity to review the bid proposals and to evaluate them with an eye to protecting the natural resource and maintaining a quality visitor experience, as well as achieving sound financial management. All of this could easily be accomplished before the current contract expires in October of 1993.

The Yosemite contracting process should set a positive precedent for the entire National Park Service. We strongly urge this committee to ask Secretary Babbitt not to sign the Yosemite contract until there has been a thorough review of the award process. It is our concern that in the haste to select a concessioner for Yosemite before the change of administration, the National Park Service did not put the long-term health of Yosemite National Park first. The new administration should avoid inheriting the bad decisions of the previous administration.

The new Director of the Park Service needs to be given an opportunity to review the Yosemite contract before it is signed. The proposals should be reevaluated by a new team which has representatives from resource protection and interpretation, as well as from concessions management. The public needs to be confident that the best applicant was awarded the contract to provide services at Yosemite.

I also want to clarify some confusion that may have occurred from the previous panel's statement. The Sierra Club is objecting to this contract not based on any preference for a particular contract. We have not taken a position in support of one or another of the contract applicants. But we are concerned about the process that has gone into the acceptance of the Delaware North bid.

Thank you for the opportunity to testify.

[Prepared statement of Ms. Sease follows:]

SIERRA
CLUB



408 C Street, N.E. Washington, D.C. 20002 202-547-1141

Statement of Debbie Sease
Sierra Club

at the
Joint Hearing on Yosemite National Park Concession Contract

before the
Subcommittee on National Parks and Public Lands,
and the

Subcommittee on Oversight and Investigations

Natural Resource Committee
March 24, 1993

Thank you, Chairman Miller and Chairman Vento, for this opportunity to testify regarding the Yosemite concessions contract on behalf of the Sierra Club. Sierra Club has always been deeply concerned with issues involving Yosemite, the place where our organization was founded over 100 years ago. We believe that the 15-year Yosemite concessions contract will set a precedent for future national park contracts. The question is, will this precedent have beneficial or negative impacts. We ask your Committee to encourage Interior Secretary Babbitt to re-visit the award of this contract to guarantee to the public that the Park's natural resources and the quality of the visitor experience will be undiminished during the next 15 years.

Sierra Club believes that the proper groundwork was not laid before the National Park Service (NPS) selected Delaware North Companies Inc. as the next concessioner for Yosemite National Park. The selection process should be re-visited to allow the next NPS Director an opportunity to review the contract he/she will have to enforce. The process appears to have been slanted in favor of commercial interests, to the detriment of improved interpretation and natural resource protection. Unless the decision-making process is re-opened and re-examined, the public can not be confident that the best concessioner was selected from among the six applicants.

"When we try to pick out anything by itself, we find it hitched to everything else in the universe." *John Muir*
National Headquarters: 730 Polk Street, San Francisco, California 94109 (415) 776-2211

PRINTED ON UNBLEACHED 100% POST-CONSUMER WASTE

Flaws in the Evaluation Process

Interpretation and Resource Protection Not Properly Represented

The 16 criteria used by NPS to evaluate the proposals included criteria covering resource protection and interpretation, but there were no representatives from either of these divisions on the evaluation team. These are crucial aspects of the concession contract, and representatives from these divisions should have been on the review team to critique these aspects of the proposals. The current concessioner at Yosemite does more visitor interpretation than NPS. A visitor is more likely to interact with a concession employee than a Park Service employee. Interpretation is an important part of the Yosemite experience and should be treated accordingly by NPS in evaluating the bid proposals. The concessioner and the services it supplies have a major effect on Yosemite's natural resources. Since no one from either of these divisions was on the evaluation team, we are not confident that the future concessioner's impact on either of these areas was fully considered.

Place Less Emphasis on Financial Criteria

All the applicants were rated "satisfactory" on the resource protection and interpretation criteria. The only reason proposals were rejected was on financial grounds. Since the financial information was the only thing NPS used to distinguish one applicant from another, the award of the contract was essentially based solely on financial grounds. This is contrary to the Park Service's regulations contained in NPS 48, chapter 8. This lists 3 primary factors NPS must use which are "1) experience and related background of offeror, 2) offeror's financial capability, and 3) conformance to the terms and conditions of prospectus or fact sheet in relation to quality of service to the visitor." The franchise fee is considered a secondary factor.

We would argue that the financial criteria should have been judged by NPS to be the least important aspect of the proposals. Public Law 89-249 guarantees the future Yosemite concessioner a "reasonable" rate of return. All of the applicants put together their financial calculations and proposed as high a franchise fee as they believed was possible. However, if after four years, the concessioner is not making a reasonable rate of return, then NPS will negotiate a lower fee for the next 4 years. While the up-front franchise fee proposed by each applicant is important, since it can be re-negotiated every 4 years to assure the concessioner a reasonable profit, it is arguably far less important than those elements of the proposal which will endure the entire 15 years of the contract.

Toxic Liability

At the time the MCA possessory interest buy-out was approved by the previous Interior Secretary, no mention was made of the toxic clean-up sites throughout the Park. Many of the most costly of the sites are leaking underground gasoline storage tanks. During the time period of the contract, the current concessioner MCA/Yosemite Park & Curry Company (YPCC) received all the benefits from these tanks, but now the next concessioner will be

forced to pay the costs of the clean-up. This will result in less money in the Capital Improvement Fund (CIF) to improve other areas in Yosemite. We agree that these areas need to be cleaned up, but we question the sagacity of the decision to relieve MCA/YPCC of all legal responsibility in this matter.

We also question the decision to base the contract award on the fact that one bidder (not even the highest bidder in terms of the franchise fee) offered to accept unlimited liability for the toxic clean-up. Contrary to the statements made by NPS, Delaware North did not offer unlimited mitigation for clean-up of the toxic storage tanks. This is not really unlimited liability because if the costs of the clean-up cause the concessioner's profits to go below the "reasonable" level, then the concessioner's franchise fee will be negotiated downwards. Accepting "unlimited liability" would be a high risk action for the future concessioner. Current best estimates of the clean-up costs are approximately \$5 million, but this figure may increase as more research into these sites is completed. Thus, the concessioner is betting on a high rate of return on their investment. One of the factors that might affect the next concessioner's "reasonable" rate of return is the cost of the toxic clean-up. If the clean-up costs more than projections, it will cut into their "reasonable" profits and NPS will re-negotiate the concessioner's franchise fee downward. Sierra Club is afraid that that gamble will translate into increased pressure by the concessioner to keep the level of commercial activity high.

Reduce Commercial Activity

Sierra Club is concerned that even though the financial arrangements of the new contract look beneficial to the Park, there may also be some long-term costs that are not immediately apparent. Any new concessioner will be taking on an enormous financial burden—including the toxic clean-up and the buy-out of the YPCC debt. How much money will this actually leave to implement the Concession Services Plan (CSP)? We are concerned that because of these heavy financial responsibilities, the concessioner will be unwilling to decrease commercial services as is called for in the CSP. Also we question whether NPS will have the institutional will to decrease commercial services within the Park when the direct result will be a corresponding decrease in revenues to the Park Service.

We have seen what can happen in Yosemite when the concessioner is a politically powerful, profit-oriented corporation. When the 1980 General Management Plan (GMP) was approved, YPCC was in the 17th year of a 30-year contract that made no mention of compliance with NPS planning documents. YPCC was not required by its contract to abide by the 1980 GMP, nor did it show any inclination to comply with any aspect of the GMP that would have resulted in a reduction of commercial services. We want to make sure that the new contract has real teeth, including timelines and penalties to insure that the CSP is implemented.

Sierra Club believes that the Yosemite concession contract offers a great temptation to a concessioner which is a growth-oriented corporate entity. Yosemite can generate enormous cash-flow, but this has been occurring at the expense of resource protection and the quality of the visitor experience. We do not want to see a concessioner in Yosemite whose parent

company wants the Yosemite division to show increasing profits every year. That would lead to increased profit-centers and commercial activity within the Park. The 30-year contract that allowed these sorts of abuses is expiring, and now we must ensure that the situation does not repeat itself over the next 15 years.

Lack of a Point System

All the elements of each bid proposal were judged "satisfactory," "marginal" or "unsatisfactory" instead of using a weighted point system. This coarse grading system prevented more detailed comparisons of each individual element of the competing bids. A point system of evaluation would have been preferable, and would have avoided the automatic elimination of five of the six on purely financial grounds. With a weighted point system, NPS could have highlighted the criteria they thought were the most important. During the first step in the bid solicitation process, NPS reportedly decided that all the applicants met the basic criterion of financial responsibility and could proceed to the second step which was the actual submission of bids. Yet, in the second step, all the bids but one were disqualified, and most were disqualified on financial grounds.

Since all the applicants were "qualified," weighted criteria would have been appropriate, because then each of the bids could have truly been compared against one another. NPS eliminated their options by using a process which disqualified all the applicants but one.

Sierra Club believes that the public should have been able to comment on the selection criteria. There was public comment on the CSP, and it would have been appropriate to have public comment on the criteria as well. This would have offered NPS valuable viewpoints and helped to legitimize the process.

The Ideal Concessioner

This is an historic occasion. The Yosemite concessions contract will differ dramatically from concessions contracts in other national parks, and we hope it will be the start of a positive trend toward restoration and protection of all our parks. On that note, there are certain issues that should have been stressed during the selection process. Legislation which was pending last Congress and is again before the 103rd Congress, would change the entire concessions process for all national parks, but could not change the Yosemite contract for 15 years if the present decision of the Department of the Interior is finalized. The financial arrangements of this contract are revolutionary, but unless fundamental changes occur in concession management, then these changes will not result in a Yosemite "unimpaired for future generations."

Below we have included some of the criteria that should be used to evaluate the bids when the Park Service re-visits the selection process.

Demonstrate Knowledge of and Commitment to the Goals of the 1980
General Management Plan (GMP)

An ideal concessioner would not only show an understanding of the NPS mission and the concessioner's role in carrying it out, but it would demonstrate a knowledge and a feel for Yosemite's particular problems as well as a commitment to solving these problems. All of the applicants had two years to conduct the research necessary to put together their proposals. It is our hope that the company which is awarded the contract is a company which took the time not only to research the financial information, but also to research the controversy surrounding the management of the Park, including the 1980 GMP.

Nowhere in any of its press releases does Delaware North even mention the 1980 GMP, an important document that continues to influence the planning process in Yosemite.

Recommend Innovative Solutions to Yosemite's Problems

Everyone agrees that a change is needed in the way the concessions operation is run in Yosemite National Park. The ideal concessioner would not only recognize the current problems of over-commercialization and resource degradation, but that concessioner would also recommend and develop innovative solutions to these and other problems facing Yosemite now and in the future.

Put the Park Before Profits

The ideal concessioner would demonstrate a willingness to follow NPS requirements even when this would result in decreased profits. The Park Service has a dual mandate to provide for visitation by the public and to maintain our parks in a manner that leaves them "unimpaired for future generations." The concessioner must subscribe to both sides of this mandate even if measures taken by NPS to ensure Park preservation might result in reduced commercial activity.

Sierra Club Recommendations

The Clinton Administration must re-visit the Yosemite concessions contract to assure the public that the new contract will protect the natural resource and result in a quality visitor experience as well as be financially responsible. A possible bad decision made by the out-going Bush Administration during its final weeks in office cannot be allowed to jeopardize the national park system.

Sierra Club realizes that there are concerns regarding the MCA/Matsushita buy-out of the Yosemite possessory interest. We believe there are ways to re-examine the contract without jeopardizing the transfer of the possessory interest.

Solicit Amended Offers from "Responsive" Bidders

NPS should ask all the applicants which were judged "responsive" to submit an amended bid. Each of the "responsive" bidders (including Delaware North) would put together an amended bid proposal, now knowing the flaws in their initial bid that kept them from being selected. Then a NPS evaluation team would look these new bids over and select the best one.

This method has several benefits. First, Clinton Administration officials would have the opportunity to review the bid proposals and to evaluate them with an eye to protecting the natural resource and maintaining a quality visitor experience. Second, Yosemite would probably receive more money. Delaware North was not the high bidder in terms of the franchise fee; according to NPS, they were selected primarily because they offered unlimited liability for toxic clean-up. In the new proposals the other applicants would have the option to correct the things that disqualified them in the initial bid, and if they wanted to win the contract, presumably they would bid higher on the franchise fee. Third, NPS could use a weighted point system to evaluate these bids to provide a better way to compare one bid to another. And finally, all of this could easily be accomplished before the current contract expires in October of 1993.

Other Options

If the contract cannot be finalized before September 30, 1993, we do not believe that this will be fatal to the buy-out of the YPCC possessory interest. A new deal will have to be negotiated, but we believe that it is in MCA's best interest to avoid negative publicity and willingly negotiate new terms with the next concessioner. YPCC could be given a 60-day, or if needed, a 6-month contract extension until the new concessioner is ready to take over the business.

Conclusion

The Yosemite contracting process should set a positive precedent for the entire national park system. We strongly urge you, the members of the House Natural Resources Committee and the Subcommittee on National Parks and Public Lands, to ask Secretary Babbitt not to sign the Yosemite contract until there has been a thorough review of the award process. It is our concern that in their haste to select a concessioner for Yosemite before the change in administrations, NPS did not put the long-term health of Yosemite National Park first. The new Administration should avoid inheriting the bad decisions of the previous Administration. The new NPS Director needs to be given an opportunity to review the Yosemite contract before it is signed. The proposals should be re-evaluated by a new team which has representatives from resource management and interpretation as well as from concessions management. The public needs to be confident that the best applicant was awarded the contract to provide services at Yosemite.

Thank you very much for the opportunity to testify on this matter.

Mr. MILLER. Thank you, Ms. Sease.

We will next hear from Dean Malley. Your statement, Mr. Malley, is in the record, and please proceed to summarize or read the relevant the portions thereof.

STATEMENT OF DEAN MALLEY

Mr. MALLEY. Thank you.

It has been four years since I started to being concerned about concessions being too low and the equity of the situation. I did not realize the extent of the gambit that we would be entering in when we start demanding more equity out of our concessioners.

I am a parent. I am going to be speaking today about family values and parental values, and I want to talk about this inspirational place that we call Yosemite and what it means to families. I am not going to be doing legalese today, although I could do technicalities with the best of them in this room.

What I am seeing is in the concessions services plan, looking at their business plan and their basic assumptions of how they are doing their statement of requirements and letting this contract, there was no client description, clients, park visitors. They have one line that talks about 60 percent are Californians. That is about it. They cover about 60 percent of Californians.

When you look at the Yosemite National Park 1991 visitor survey, you also find out that the majority of visitors are anglo, upper middle class. There are two economic class of visitors. \$25,000 and under is the largest class. The second class of visitors is \$72,000 per capita income and above. If you look at the local area demographics in California and that segment, it is Chicanos. It is people of limited economic means. It is also people like myself in Sonora, California. Where is the analysis? Where is the client impact? Where is the visitor impact? There was no social impact analysis.

I want to read what their social impact analysis from their concessions services plan was. There is a shell game going on with visitation lodging. They said they were doing a net 20 percent of lodging. What they did not tell you is they are increasing the upscale, moderate class by 20 percent and decreasing the family class, the economy class by 40 percent for their net 20. Their big impact analysis on this, the decrease could cause inconvenience and economic hardship for people wanting to occupy lower priced units, but unable to obtain them. Period. That is it.

Moving right along, why? Why are they doing this kind of conversion when the general management plan said reduce rooms across the board? They said they are doing a healthy mix. I think it's a nix.

We had trial by CNN recently when Mike Finley, superintendent of the park, said well, there is a lot of social equity concerns. We have an outcry. We are going to revisit this. They tried to take out 70 percent of the economy class rooms. Well, it is \$1 million a month more. In reference to Mr. Lehman's concern, it is \$1 million a month more revenue per month when you take out 40 percent economy and put in 20 percent upscale.

So, here we go. Fifteen years of upscaling the park services. Park people tell me on the side rather frankly, look right in my face and tell me, well, you know, these upscale people are gentler visitors.

They do not throw diapers in the river and such. They are just nicer people to have around.

Why an increase in any rooms at all? Since 1980 1,300 rooms have been added outside the park. A lot of those local economies outside the park are suffering because the monopoly in the park is keeping people from using these 1,300 rooms on the outside of the park. NPS48, park policy says get as much outside the park wherever possible. Don't put them in if you do not have to. Of course, they did not consider these policies. The concessioners have been driving this whole process since day one.

They Camp Curry is noisy. Yes, kids are noisy. Kids and families are noisy. They are pretty happy folks, though. It is crowded. Sure, families bring crowds. That is where I grew up.

When you take 15 years and on top of that preferential right of renewal, which this contract has, you are talking 30 years. You are talking a legacy, a one-generation legacy, right away with no change of continually locking out more and more middle class, people without money.

I could talk about the environment on this, but what is this place? This place is an inspirational temple to millions of people, and that is poor people also. We see this open checkbook being put out here. We know where that money is coming from, that second class of visitors, \$72,000 and above. Well, I do not think that is appropriate.

The right to make a profit. That has been established pretty well. If they do have to pay more, they certainly know where to get it. MCA has certainly known that for the last 15 years.

We are talking barriers to access based upon social economic filters. We are demanding too much cash from this park. Period. I do not care whether it is 20 percent or whatever. We are talking \$100 million contribution. Maybe we should be talking \$50 million. Maybe we should be talking \$80 million. \$100 million out of 7 square miles. What is that going to do to the visitor experience?

Where are the democratic checks and balances? The Park Service is sharing in the profit. They control the profit. Is that smart?

Gentlemen, I am being brief. I thought maybe I only had 5 minutes here today. Let's ask Babbitt to put aside this contract and get back to park business. Let's talk about the entitlement of all people of all ethnic and social economic class, unequivocal access to this world heritage, inspirational temple. Gentlemen, reaffirm the purpose of the national park as a haven from urban relief to all citizens.

There was a religious man I rode out with here on the plane. I was going to do my proposal, have it typed up for you and brought here. All of a sudden, he started praying for me. This man was talking about the root of many America's problems lie in failure of families to establish core values of worth and responsibility.

I started this fight in 1989 when I became concerned that my family of limited financial means would be denied access to my public park. I cannot afford a room. The legacy is if you put in more upscale, you demand more from your park, you start locking out your citizens, the citizens maybe that are burning cities, you give them someplace to go where they can get some relief, maybe

you are going to have less fires in the cities. Obviously, this is what parks were set aside for in the first place.

I am not going to debate whether the contract process was flawed or not. I am just going to close very rapidly on the notion that the concessions services plan was flawed in the nature that is letting the upscale trend continue, the conversion of public open lounge to bars continues, things like this continue. When Delaware North, a \$1.3 billion industry, basically making their money on dog and horse racing, is going to check into here, they are going to know exactly how to get more money out of this park. We are locking on something we cannot afford to lose.

The impacts, Congressman Miller, for all public lands when we go to revolving funds and talk sharing with our citizens the burden of paying for the land out there and the impacts on the land, the impacts could be devastating if we do not do this checks and balance, if we do not look at the democratic values. How are we going to get people without money to be able to share public lands as well?

Thank you.

Mr. MILLER. Mr. Pritchard.

STATEMENT OF PAUL C. PRITCHARD

Mr. PRITCHARD. Mr. Chairman, thank you very much. I appreciate the opportunity to be with the panel and for you to take the time that you have to discuss this issue which we believe is very important.

I particularly appreciate the impassioned comments of the gentleman before me.

Mr. Chairman, I am joined by Richard Busse who is our economic consultant, and I would like to limit my comments to two aspects. First, the question of the Yosemite contract and three points about that, and then secondly, the whole process by which the Federal Government and the Park Service completes this whole concession contract business.

If I might, I would like to say that I would like to submit my testimony for the record since a number of the points have been hashed over earlier.

But it is important for me to point out, since a question was raised about an article about the association and so forth, that our statement is and was not that this process is the most, but is one of the most arcane, fiscally irresponsible, environmentally destructive systems run by the Federal Government, and we stand by that. I hope Mr. Hansen will give us a chance to explain that to him if he would like.

Mr. Chairman, we also, in our 74 years of history, have been committed to the careful oversight of the concession process which we believe has been a dilemma for the national parks from their inception, many of the concessions predating the parks themselves, with many of the concessioners assuming that they do, in fact, own the parks.

We believe they are owned by the American people and, therefore, should be responsive to them.

Now, I refer to Mr. Busse's review for us and our staff, and on page 2 of my testimony are the documents that we had.

May I say that at the inception of this Yosemite contracting process, we did not participate in any particular proposal. That is not the role of NPCA, but we also offered to each of the concessioners our willingness to advise them on what we thought were important factors that should be weighed in this.

Three points then about the Yosemite contract. First, we believe that toxic cleanup responsibilities were inappropriately transferred to the new concessioner instead of being handled by Yosemite Park and Curry Company. Mr. Chairman, we believe that it is not appropriate and, in fact, is a bad policy for the Federal Government to allow the Park Service to transfer the cleanup from one concessioner to the other. In essence, the American people will be paying for this cleanup rather than the company that made the problem to begin with.

Secondly, Mr. Chairman, we believe the process used for evaluating the contracts was highly subjective. In the three panelists that you had this morning, all three of whom I have the greatest respect for, you have over 70 years of experience. That 70 years would not be replicated in other park negotiations. There is no way that we can be assured the talent we had this morning in the Park Service will be looking over the shoulders of the bidders and of the concessioners themselves. We must have a less subjective, more quantifiable process.

Thirdly, regarding the Yosemite contract, we believe the number of bidders was unduly limited by extraneous conditions and requirements. Those conditions were the initial equity capital of \$12 million which, to this day, we cannot determine why that figure was used and what it represented, but also the concept of unlimited liability, which we think, as I said earlier, is inappropriate. We talked to the Marriott Corporation. They told us that they declined from continuing their proposal because of that unlimited liability issue. That sort of company would have been able to handle all the requirements, including cleaning up what are typically known toxic issues and should not have been thrust in this sense of an unlimited liability.

Regarding this as it relates to the whole process of concessions for all the 500 or so concession agreements in the park system, we have just a few comments, but we think this whole process points out why the 1965 act must be reformed. We believe that competitive bidding for concession contracts is the best way to select concessioners, and an open process, in which the American people are able to observe why decisions are being made, is imperative. Serious questions were omitted this morning. We understand why. But questions that some day the American people have a right to know why decisions that were made were made.

I would point out also that we have basically begun the new process with a bungee cord wrapped around our leg because in 15 years, regulations will require again that this company, unless they wish not to rebid on the contract, will have a preferential right of renewal. We believe that is not in the best interest of this particular concession agreement or in the entire system. It is time now that we take the steps to do the reform.

Secondly, regarding concessions contracting, a point that was not made, but we think is very important is that we should not couple

construction requirements with provision of services. This strategy is a no-win situation for the Government and for the American people. It adds cost to the American people, and generally speaking, we think it is appropriate for the Park Service itself to manage its assets with more fiscal prudence and to be responsible for the construction of facilities and not construct those and then turn over the possessory interest to the concessioner.

Thirdly, we think that it is very important that the fees be based on the probable value to the concessioner and not on the gross receipts for the concessioner. By requiring a gross receipts approach, Mr. Chairman, what you do is you put the Park Service in the business of a partner with a concessioner to help them increase their gross receipts. That is not in the best interest of the parks. It is not in the best interest of the visitor, and we think it is not the best way for the Park Service to operate. We think it is important, therefore, that the Park Service be taken out of this joint venture role that we see evolving in this particular agreement and be placed in a situation where they charge a flat fee, one based upon a reasonable return that they think they should receive.

Mr. Chairman, in conclusion, this contract provided some very useful insights, all of which lead us to conclude that it is imperative that the Congress move forward with the reform of the 1965 Concession Policy Act. We think it is imperative that the conditions that have been discussed and that your committee has dealt with very ably in the past be dealt with system-wide and not just with this particular one concession agreement. Otherwise, we think that in 15 years, we or our successors will be sitting down at these tables dealing with exactly the same issues that we are here today to deal with.

Thank you, sir.

[Prepared statement of Mr. Pritchard follows:]

National Parks and Conservation Association

TESTIMONY PRESENTED BY

**PAUL C. PRITCHARD
PRESIDENT**

NATIONAL PARKS AND CONSERVATION ASSOCIATION

**BEFORE THE
SUBCOMMITTEES ON NATIONAL PARKS, FORESTS AND PUBLIC LANDS
AND
OVERSIGHT AND INVESTIGATIONS**

ON THE PROPOSED YOSEMITE CONCESSIONS CONTRACT

MARCH 24, 1993

My name is Paul C. Pritchard, and I am President of the National Parks and Conservation Association. The Association is a 350,000 member nonprofit organization dedicated to the protection and effective management of the National Park System.

I am here today because of National Parks and Conservation Association's (NPCA) long standing involvement with concessions policy. In fact, one of the reasons for NPCA's establishment in 1919, was to ensure that parks provide visitor services and facilities that are compatible with the protection of park resources.

NPCA has provided extensive comments on the Yosemite Concessions Services Plan; we testified at hearings on that plan. Also, we have been the lead conservation organization promoting reform of the Concessions Policy Act of 1965.

I believe the Yosemite contracting process is an important subject of inquiry because of its illustrative and precedent-setting nature. In preparing for this hearing, NPCA engaged an economic consultant, Richard Busse, to review the few documents available to the public, and to identify procedural or other problems for the subcommittee. The Yosemite-related documents reviewed by Mr. Busse included:



1776 Massachusetts Avenue, N.W., Washington, D.C. 20036-1904
Telephone (202) 223-NPCA(6722) • Fax (202) 659-0650



PRINTED ON RECYCLED PAPER

1. Final Concessions Services Plan EIS
2. Yosemite Housing Plan, Draft Supplement to the Final for the Management Plan
3. Prospectus, Phase I, Yosemite Hotel Services (April 1992)
4. Prospectus, Phase II, Statement of Requirements, Yosemite Hotel and Other Services (July 15, 1992)
5. NPS Memorandum: "Review of Yosemite Concession Contract Offers" (December 17, 1992)
6. NPS Briefing, Final Rulemaking, Concession Contracts and Permits (June 12, 1992)
7. "National Parks Issues Involved in the Sale of the Yosemite Park Concession," GAO RCED-92-232 (September 1992)
8. Final Audit Report on Followup Review of Concessions Management, National Park Service, (No. 90-62), Office of the Inspector General, Department of the Interior
9. NPS News Release, "Delaware North Wins Contract For Yosemite Visitor Services" (December 17, 1992)
10. "Yosemite Hotel and Other Services, Evaluation of Proposals" (Updated NPS document)
11. Letter to Jeremy M. Jacobs, Delaware North Corporation from Herbert Cables (December 17, 1992)
12. YRT Services Corporation News Release of January 11, 1993

NPCA did not seek to evaluate the actual bids for Yosemite to determine if NPS selected the best concessioner for the park. Furthermore, NPCA does not intend to comment on the qualifications of Delaware North as a concessioner. Our review focused on the contracting process for Yosemite and on NPS contracting policy.

I would like to emphasize that NPCA strongly supports the provision of concessions services by private sector firms. We do not favor the replacement of private concessioners with government-run concessions, nor do we favor the elimination of all concessions from the National Park System, as some have alleged. We do believe that competitive bidding for concessions contracts is the best way to pick the best concessioner and to obtain fair, reasonable fees for the government.

THE YOSEMITE CONTRACT

There are three concerns I wish to raise about the Yosemite contracting procedure:

1. Toxic cleanup responsibilities were inappropriately transferred to the new concessioner instead of being handled by Yosemite Park and Curry Company.

A major factor in the bidding process was whether the offerors would accept unlimited liability for cleaning up toxic substances left in the park by Yosemite Park and Curry Company. This point became a major stumbling block for several of the firms who initially qualified as potential concessioners and for those who later submitted offers.

While Delaware North has agreed to accept full responsibility for the cost of clean up -- budgeted at \$16.9 million -- it should be noted that it is really the American public who will pay the bill. In order to cover cleanup costs, Delaware North obviously had to lower the amount it could offer in contributions to the Capital Improvement Fund during the contract term.

When one corporation buys the business of another, and real estate is involved, it is common practice to require the seller set up an escrow fund to cover any toxic liabilities. This approach is followed because the buyer may have no way of really knowing what the liability may be. As we all know, toxic cleanup costs often exceed even the most careful estimates.

I do not know why this same approach was not followed by the National Park Foundation (NPF) in negotiating the sale of the Yosemite Park and Curry Company. But because NPF did not make Yosemite Park and Curry Company clean up its mess before exiting the park, the public will now have to pick up the tab.

2. The process used for evaluating offers during Phase II of the selection process was too subjective.

In Phase II of the selection process, the NPS selection panel evaluated all six offers using 16 criteria. Each application was given a satisfactory, marginal or unsatisfactory rating for each criterion. Based primarily on these ratings, the selection panel then picked the best overall offer.

It is my understanding that under normal government contracting procedures, offers are rated using an objective procedure to determine how well an offer meets each of the bid criteria. Furthermore, various criteria are weighed according to their importance to the overall contract objectives. This is the only way an evaluator can objectively compare the relative value of each offer in a bid situation.

The NPS appears to have used a subjective evaluation method in which each offer was judged to be satisfactory, marginal, or unsatisfactory by the selection panel. This kind of subjective process is more likely to lead to errors, and is more likely to be challenged by losing bidders.

3. The number of bidders for the contract was unduly limited by extraneous conditions and requirements that served to limit competition.

The principal objective of any concessions contract should be to attract competent firms capable of delivering high quality goods and services to the public. The Yosemite contract, however, contained conditions that acted to limit the number of firms desirous of submitting bids.

For example, NPS required bidders to provide \$12 million in "initial equity capital" -- evidently to cover the initial negative cash flow of the concession in the fall-winter period. No substantive rationale is given by NPS for the \$12 million requirement in the documents at our disposal, nor does NPS provide a clear definition of what is meant by "equity capital." The real issue here is whether an applicant proposes a reasonable way to cover the initial negative cash flow situation. There may be more than one way to do that.

Use of the term "equity capital" by NPS implies non-borrowed money. Yet, it would also be possible for a good company to show it could handle the negative cash flow with borrowed funds. The equity requirement may have prevented excellent service providers from submitting bids in the first place. It also was a reason several bids were adversely rated.

Another filter is the contract requirement to accept unlimited liability for toxic cleanup. By requiring that the liability for toxic cleanup be transferred to the new concessioner, the NPS skewed the bidding process by injecting a major element of risk into the prospectus. This risk may have served as a handicap to potential concessioners whose financial backers were intimidated by the risk. According to our conversations with Marriott Corporation officials, the required acceptance of open-ended liability was not something the Marriott Corporation was prepared to accept. The liability issue weighed heavily in Marriott's decision not to submit a bid. Other bidders, according to the NPS memo of December 17, 1992, also hedged their bids on the liability issue, and as a result were adversely evaluated.

LESSONS FOR THE FUTURE

1. Competitive Bidding for Concessions Contracts Is the Best Way to Select Concessioners.

The Yosemite contract process proves a point that NPCA has made time and time again in the debate over concessions reform. Open competition for contracts is the best way to ensure payment of fair fees to the government for concessions privileges.

In this case, where there is no incumbent seeking to renew the contract, 12 firms qualified as potential bidders and six actually submitted offers. The offer of Delaware North, according to NPS, will return approximately twenty percent of the annual gross receipts to the government in fees and other benefits. Contrast that with the total fees paid by the current concessioner, Yosemite Park and Curry Company, which in 1991 paid about three-quarters of one percent of gross revenues to the government (approximately \$668,000).

Unfortunately, when Delaware North's contract comes due in 15 years, competition will once again be barred in Yosemite because the new contract gives the incumbent a right of preference to renew the contract without competition. We are about to take a great leap forward in Yosemite, but with an bungee cord attached. That bungee cord is the Concessions Policy Act of 1965, which mandates a right of preference for incumbent concessioners.

2. The coupling of construction requirements with the provision of visitor services in NPS concessions contracts detracts from the search for the best provider of desired services and is financially disadvantageous to the government.

Long ago, the NPS with the approval of Congress, decided to require concessioners to be both general building contractors and service providers. This was done because of the belief that the government was too poor to build and maintain concessions facilities on its own land and lease them for use to concessions operators. This strategy, while well intentioned, created a no-win situation for the government. The concessioner simply lowered his payback in fees to the government to cover construction costs, so the public ultimately paid for that construction in foregone revenue. Furthermore, the concessioner gained a possessory interest in structures built on government land which must be bought back by the government if the concessioner's contract is terminated.

This is a very bad arrangement for the taxpayer. Coupling construction duties with service duties in a concessions contract obscures the primary goal of securing top-flight service businesses to serve park visitors. Requiring the concessioner to be both a construction firm and a service firm probably eliminates many potential bidders who might otherwise provide outstanding services (and higher fees) to the government.

As a landlord, NPS should manage its assets with fiscal prudence. It is likely to get a better return from concessioners over the long-term by constructing federally-owned concessions structures and leasing them to service providers at fair rents just like a shopping mall owner leases retail space in the mall. This approach would enable NPS to focus its attention on securing top-flight service businesses to run the concession. This approach also is likely to produce greater competition for contracts.

3. The NPS should receive specific fees for the granting of concessioner privileges.

The 1965 Concessions Policy Act requires that "fees be based on the probable value to the concessioner of the privileges granted by the contract." This rule makes economic sense and is good management policy. Effective asset management dictates that the NPS have a clear understanding of the value of concessioner privileges, especially when a big part of the privilege granted is the use of NPS land and facilities. Additionally, if fees are sound reflections of value of the concessions opportunity, the NPS need not unduly concern itself with the concessioner's "return on investment" or "profitability on the operation as a whole." Simply stated, if fees are set appropriately and the concessioner doesn't generate a reasonable income, the concessioner is under-performing and should be replaced. NPS has a great deal of experience in the concessions business at Yosemite and should be able to set reasonable minimum fees for the concessions privilege.

Furthermore, fees should not be computed as a fixed percentage of total gross receipts. Whenever possible, fees should be calculated as fixed annual payments based on the economic value of individual concessions activities in the park, not as one fee based on a percentage of the lump-sum gross. Basing the fee on gross receipts is a rudimentary form of a joint venture. The NPS has no reason to "joint venture" with its concessioners except, perhaps, in cases where the NPS is trying to encourage a concessioner to start a new concession that has high risk. The Yosemite concession is not a high-risk concession, nor are other large concessions in other national parks.

CONCLUSION

To conclude, NPCA's review of the Yosemite contract process offers useful insights into park concessions policy and underscores the need to overhaul the 1965 Concessions Policy Act. We see that vigorous competition will occur when there is no incumbent with a preferential right of contract renewal. We also note that the financial return to the government generated by competitive bidding is much greater than that provided by the incumbent concessioner, who held a monopoly position in the park because of the interlocking provisions of the 1965 Act.

Unfortunately, the benefits of the contract turnover in Yosemite are limited to this point in time. Because of the 1965 Act, Delaware North will be given a preferential right to renew its contract in 15 years. There will be no further competition, unless Delaware North chooses not to extend its contract.

The future lack of competition in Yosemite, and at all other parks, will remain government policy until Congress amends the 1965 Act. Financial losses to the government will continue, and concessioners will continue to hold the upper hand in negotiations with NPS.

This concludes my testimony. Thank you very much.

Mr. MILLER. Thank you, Mr. Pritchard.

Finally, we have the testimony of Ron Tipton. Ron, welcome. Thanks for your patience during this today. Do you want to introduce your associate?

STATEMENT OF RONALD J. TIPTON

Mr. TIPTON. Thank you, Mr. Vento. I would like to introduce Joan Reiss, who is our regional director for The Wilderness Society for California and Nevada and has been very involved in the Yosemite contract process since its inception.

In the unenviable position of being the last witness in a long hearing, I will of course summarize my statement and try to make some sense in a few minutes.

My involvement with this issue, Mr. Chairman, began almost 20 years ago when I was on the staff of the House Government Operations Subcommittee on Environment, Energy, and Natural Resources. We had a series of celebrated hearings in 1975 and 1976 regarding the need to reform the concession system, as my colleague Mr. Pritchard suggested, and also focusing specifically on Yosemite. I wish I could report today, almost 20 years later, the Park Service has made great progress in limiting the role and influence of park concessioners, which was a real issue in those hearings, what is the appropriate role of the park concessioner. In the case of Yosemite, the park concessioner has dominated park management policy unfortunately. Unfortunately, today very little has changed. In fact, as I presented this testimony and I prepared it, I could not help but feel a strong sense of history repeating itself.

There were some modest improvements after those hearings and some hearings in this committee later in the 1970's, but that was all negated by the arrival of James Watt in 1981. It became obvious then that the Park Service's modest improvement in managing concessioners would be reversed, and indeed it was. He, early in his tenure—and you may remember this, Mr. Chairman—had an infamous meeting with the Conference of National Park Concessioners 12 years ago this very month, in which he assured the group that if anyone had a problem with the Park Service, he would take care of the problem or the employee, "whichever is easier".

For 12 years after that, the result has been business as usual. Park concessioners continue to determine their own destiny and to fend off relatively feeble attempts by the Park Service to impose restrictions on their normal way of doing business. Nowhere is this more true than Yosemite Valley.

In 1980 we adopted a management plan, 13 years ago, after almost a decade of debate and public involvement. Five goals. Reclaim priceless natural beauty; secondly, markedly reduce traffic congestion; three, allow natural processes to prevail; four, reduce crowding; and five, promote visitor understanding and enjoyment. Definitely a noble plan with a very noble statement of purpose.

However, Mr. Chairman, it is a national disgrace, and I use those words advisedly, that this general management plan for Yosemite National Park has never been implemented. Check and see how many of the facilities have been moved out of Yosemite Valley, how many rooms have been eliminated in the last 13 years, for ex-

ample. The proposed concession services contract that we are discussing today represents yet another chapter in the history of failure of the National Park Service to do the right thing in Yosemite National Park.

I want to make two points about that. First of all, our criticism is directed at the National Park Service, not at Delaware North. Second, we are not here in support of any alternative bidder. Rather, our central interest and concern is that a concession contract be awarded which is specifically directed at implementing the general management plan for the park.

The Park Service has here an historic opportunity to finally begin the process of removing unnecessary and inappropriate visitor and concession facilities from Yosemite Valley. Now, you can say they can do that no matter who the concessioner is, and in theory that is true. However, the reality has been throughout the history of Yosemite that a major profit-oriented park concessioner will do anything possible to increase business and profits regardless of the impact on park resources or the quality of the visitor experience. Witness the 30 years of the previous Curry contract.

The only way to assure that the public interest is served and the NPS plan calling for a reduction in overnight lodging, related visitor facilities, and private vehicle access in Yosemite Valley is implemented is to select a concessioner committed to these goals and state those management requirements explicitly in the contract. The Park Service in this instance has done neither.

I am not here to denigrate Delaware North. In fact, I cannot possibly evaluate how they would perform this contract. What is clear, however, is that there is no evidence to suggest—and I have looked for it in every news article that has been written profiling Delaware North—that it has the necessary commitment to carry out the Yosemite general management plan or the environmental sensitivity to at last begin the long process of restoring the natural world in Yosemite Valley. In fact, by not seriously considering the bid by the Yosemite Restoration Trust or the other competing concessioners here, the Park Service has again demonstrated its lack of intent to make this 1980 plan happen.

Why do I say this? Well, first of all, it is obvious the Park Service has adopted a business as usual approach to this concession contract award. Find another large corporate concessioner that it is comfortable with and go with that one.

Second, it is evident the Park Service has made no particular effort to find a concessioner that was committed to national park values or the implementation of the Yosemite general management plan. Example. Look at the process that led to the statement of requirements for this concession contract. Four public hearings in California. One of the major points made by many members of the public was that the Park Service should include an environmental standard in the SOR in which potential concessioners would have to describe how they would improve the natural experience of the visitor in the park and how they would comply with the park's general management plan. The Park Service did not do that even though many people recommended that they do so.

Third, it is patently obvious the Park Service goal in awarding this contract is to find a large corporate concessioner with experi-

ence in managing visitor facilities that is willing to provide some significant cash that could at least in part be used to augment its Yosemite budget. The agency has no interest or desire that it has demonstrated in finding a concessioner who would get out in front of the Park Service in changing the status quo in Yosemite Valley, not surprising given the Park Service's role in protecting the status quo over the last 25 years in Yosemite. Witness Mr. Davis' comments in answer to the question of why did you award this contract, what basis. Number one, experience in the business; two, financial capability. Where is number three at least, which is commitment to preservation of park resources and to this general management plan? Not there.

Finally, examine for a moment this rush to judgment that took place. I will not go into the details here, but all I can say is I have had about 18 years of experience in looking at national park concessions. I have never seen a park concession contract awarded so quickly after the review panel was assembled, and usually we are talking about contracts on which there is no competition. In over 90 percent of the cases in the last 5 years, there has been no competition. So, it is hard to imagine how they could do that in 17 days with six bids.

I just have one recommendation in closing which I would address both to the committee and Secretary Babbitt. Do not approve the award of the final Yosemite concessions contract until after a new Park Service Director is named, after he or she has had the opportunity to review the proposed contract with Secretary Babbitt and the committees of jurisdiction in the House and Senate. If because of that, it becomes necessary to extend the current contract for an interim period, so be it. I would like to enter in the record a letter that we have received from the law firm of Morrison & Foerster which addresses the issue of the ability of the Park Service to extend the contract, which we think would be fairly easy, the existing contract, if it is necessary to reexamine this whole process.

Delaware North has already indicated it intends to retain much of the existing Yosemite Park and Curry Company management team. So, delay in awarding the contract to a new concessioner is going to have little affect on the visitors to the park this year.

What is important, indeed critical, is that the new administration seeks to fundamentally change the status quo in Yosemite Valley and begin the long overdue effort to make that valley what it once was and what it should again be, one of the most beautiful places on earth.

I will close with a quote from one of my heroes, Ansel Adams, that he gave in 1948. He wrote to a Park Service friend who was a member of an Interior Secretary's commission as follows. "I have seen Yosemite progress from a relatively natural area to a cleverly controlled resort. The fact is that many of the people who operate concessions in the national parks do and would subscribe to any desecration in these areas for the sake of profit." It is time to end the desecration of our national parks, and Yosemite is the right place to start.

Thank you.

[Prepared statement of Mr. Tipton follows.]



THE WILDERNESS SOCIETY

TESTIMONY OF RONALD J. TIPTON, THE WILDERNESS SOCIETY, BEFORE THE HOUSE NATURAL RESOURCES SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS ON THE PROPOSED AWARD OF A CONCESSION CONTRACT AT YOSEMITE NATIONAL PARK, MARCH 24, 1993

Mr. Chairman, and members of the Subcommittee, I want to express my appreciation on behalf of The Wilderness Society for the opportunity to provide our views concerning the proposed concession services contract for Yosemite National Park which the National Park Service has recommended to the Secretary of the Interior. My name is Ron Tipton, and I am the Deputy Vice-President for Field Programs for The Society.

I would like to preface my formal statement with a personal comment. Almost two decades ago, as a member of the staff of the House Environment, Energy and Natural Resources Subcommittee, I helped conduct joint hearings with the House Small Business Committee that focussed on the extraordinary and disturbing degree of influence the Yosemite Park and Curry Company had exerted on management of Yosemite National Park. In 1976 the two committees issued a joint report titled "National Park Service Policies Discourage Competition, Give Concessioners Too Great A Voice In Concession Management." Using Yosemite as a case study, the eighty page report documented the utter inadequacy of the 1965 Concessions Policy Act as well as the failure of the Park Service to manage park concessioners in a way that protected the public's interest in preserving park resources and in providing a quality experience to the park visitor.

I wish I could report to you today, almost twenty years later, that the Park Service had made great progress in limiting the role and influence of park concessioners throughout the national park system. Unfortunately, that is not the case. In fact, as I present this testimony I cannot help but feel a strong sense of history repeating itself.

In March of 1979 The Wilderness Society presented testimony on the need for national park concessions reform to the Senate Parks and Recreation Subcommittee in which it pinpointed three specific problems:

(1) Concession facilities located in national parks are frequently inappropriate and can cause harm to the park's natural resources. All new facilities should be located outside park boundaries and many of the existing facilities should be phased out.

900 SEVENTEENTH STREET, N.W., WASHINGTON, D.C. 20006-2596

(202) 833-2300

Printed on recycled paper

(2) The undue influence that concessioners wield over the planning and management of our national parks must be drastically reduced.

(3) The Park Service should be required to regulate concessioners more effectively. The failure to do this stems from the fact that the Park Service will not or cannot under present law force concessioners to serve the public interest.

With the arrival of James Watt as the new Secretary of the Interior in 1981 it became obvious that the modest improvements in concession management that occurred in the aftermath of the firestorm of congressional criticism and scrutiny of the Park Service's performance in regulating concessioners during the 1970s would be reversed. And Watt did just that. Early in his tenure at Interior he set the stage for the concessioners to re-establish the upper hand with the Park Service in a now-infamous speech to the Conference of National Park Concessioners twelve years ago this month, in which he assured the group that if anyone had a problem with the Park Service, he would get rid of "the problem or the employee, whichever is easier."

The result has been twelve years of business as usual, with park concessioners continuing to determine their own destiny and fend off relatively feeble attempts by the Park Service to impose restrictions on their normal way of doing business. I saw this first-hand in 1989, when, on an extended family vacation, I visited 19 national park areas in the U.S. and Canada. As I wrote at the time, "the overriding, overwhelming impression that I gained from that experience is that both the National Park Service and Parks Canada are allowing some of the most beautiful places on earth to be degraded by excessive development of facilities to serve visitors. I saw this at Crater Lake, at the south rim of the Grand Canyon, and at Mesa Verde, where existing and proposed development in some of the most scenic and environmentally sensitive places in those parks had seriously compromised park values, and the concessioner has undue influence in park management.

Nowhere is this more true than in Yosemite Valley. In 1980, after almost a decade of public involvement, the Park Service adopted the General Management Plan for Yosemite. Five broad goals were outlined for the park: 1) reclaim priceless natural beauty; 2) markedly reduce traffic congestion; 3) allow natural processes to prevail; 4) reduce crowding; and 5) promote visitor understanding and enjoyment.

The existing situation in 1980 was analyzed as follows: "Yosemite is now at a crossroad. During a century of public custodianship of this great park, many decisions have been made, all well intended, which have resulted in a march of man-made development in the Valley. Today, the Valley is congested with more than a thousand buildings--stores, homes, garages, apartments, lodging facilities, and restaurants--that are reflections of our society; the Valley floor is bisected by approximately 30 miles of roadway which now accommodate a million cars, trucks and buses a year. But the foremost responsibility of the National Park Service is to perpetuate the natural splendor of Yosemite and its exceedingly special Valley.

The intent of the National Park Service is to remove all automobiles from Yosemite Valley and Mariposa Grove and to redirect development to the periphery of the park and beyond. Similarly, the essence of wilderness, which so strongly complements the Valley, will be preserved. The result will be that visitors can step into Yosemite and find nature uncluttered by piecemeal stumbling blocks of commercialism, machines, and fragments of suburbia."

A noble statement of purpose, indeed. However, Mr. Chairman, it is a national disgrace that this general management plan for Yosemite National Park has never been implemented. And the proposed concession services contract we are discussing today represents yet another chapter in the history of failure of the National Park Service to do the right thing in Yosemite National Park.

For this reason I urge this Committee and the Department of Interior not to rush ahead and approve the proposed concession contract with Delaware North. There is no reason the current contract could not be extended while the Park Service fashions a contract that really serves to implement the Yosemite management plan.

In discussing this contract, I want to make two points at the outset. First, our criticism is directed at the Park Service, and not at the potential new concessioner, Delaware North. Secondly, we are not here in support of any alternative bidder; rather, our central interest and concern is that a concession contract be awarded which is specifically directed at implementing the general management plan for the Park.

In selecting a new concessioner the Park Service has an historic opportunity to finally begin the process of removing unnecessary and inappropriate visitor and concessioner facilities from Yosemite Valley. For that goal to be achieved it is essential the concessioner be in full support of that objective, instead of leading the opposition to phasing out these facilities as the Curry Company has done for the past three decades. While the Park Service in theory has the power to require any concessioner to comply with management plans or agency directives, in reality a major, profit-oriented park concessioner will do anything possible to increase business and profit regardless of the impact on park resources or the quality of the visitor experience.

The only way to assure that the public interest is served and the NPS plan calling for a reduction in overnight lodging, related visitor facilities and private vehicle access in Yosemite Valley is implemented is to select a concessioner committed to those goals and state those management requirements explicitly in the contract. In this instance the Park Service has done neither.

I am not here to denigrate or criticize Delaware North; in fact, it is not possible for me to evaluate how well Delaware North would manage the hotels, restaurants, gift shops, and the many other facilities in the Valley. What is clear, however, is there is no evidence to suggest that Delaware North has the necessary commitment to carrying out the Yosemite general management plan or the environmental sensitivity to at last begin the long process of restoring the natural world in Yosemite Valley. In fact, by not

seriously considering the bid by the Yosemite Restoration Trust, the Park Service has once again demonstrated its lack of intent to make the 1980 management plan happen.

Why do I say this? First of all, it is obvious the Park Service adopted a business-as-usual approach to this concession contract award. Its primary, overriding concern is to maximize the revenue it receives from this contract, a legitimate concern given its general funding needs and the embarrassing 3/4 of one per cent of receipts franchise fee it has been paid under the Curry contract. I don't blame the Park Service for attempting to increase the federal government return from this contract, but that should not be its primary objective in Yosemite. Even the 1965 Concessions Policy Act, so clearly written to protect the concessioners' interest, states that the amount of revenue received from concession contracts is to be secondary to protection of park values.

Secondly, it is evident the Park Service made no particular effort to find a concessioner that was committed to national park values or the implementation of the Yosemite general management plan. After twenty years of public concern and controversy, NPS is still not willing to make the clear commitment to moving facilities out of Yosemite Valley, and to finding the right concessioner to accomplish that objective. Examine the process that led to the Statement of Requirements (SOR). At four public hearings in California the Park Service was requested to include an environmental standard in the SOR in which potential concessioners would have to describe how they would improve the natural experience of the visitor in the Park and how they would comply with the park's general management plan. In addition, the Park Service was requested to award points to different sections of the contract so that the bidders knew what was most important to the Park Service as bids were prepared. Neither of these recommendations was ever followed.

Third, it is patently obvious the Park Service's goal in awarding this contract is to find a large corporate concessioner with experience in managing visitor facilities that is willing to provide some significant cash that could at least in part be used to augment its Yosemite budget. The agency had no interest or desire in finding a concessioner that would get out in front of the Park Service in changing the status quo in Yosemite Valley. This is why the Park Service's evaluation panel, which looked at the competing proposals, did not compare them to each other. Rather, it picked one (Delaware North) it was comfortable with, and found cause to dismiss the others. This is a classic business-as-usual approach.

Fourth, if the Park Service were in a graduate program in environmental planning and submitted the proposal that led to the SOR, the Park Service would flunk! The SOR is quite incomplete since it lacks a final employee housing plan as well as a public transportation plan for the Valley. In fact, the draft housing plan was an embarrassment since the preferred Park Service alternative was to build a \$150 million city in the heart of great gray owl habitat, a California endangered species. Housing and transportation are key elements in future decisions about Yosemite Valley and it is critical the right strategies be adopted for controlling automobile access to the Valley and for removing non-essential NPS and concessioner employee housing. Yet the Park Service wants to rush ahead with a new concession contract without having these strategies in place.

Finally, examine for a moment the rush-to-judgment that took place in this case. November 16, 1992 was the deadline for submission of proposals by the twelve companies that met NPS proposal selection requirements related to experience and financial capability to undertake this contract. The bidders' proposals contained an estimated 50,000 pages of materials, yet the Park Service announced its selection of Delaware North 14 days later! Now all of us are painfully aware of how slowly government works, except when it wants to reach a particular decision, as was the case here. Is it too cynical to suggest that it was Secretary Lujan and the National Park Service's desire to award this contract before the end of the Bush Administration? I think not.

Mr. Chairman, I have only one recommendation, which I would address to both this Committee and Secretary Babbitt: Do not approve the award of the final Yosemite concessions contract until after a new Park Service Director is named, he/she has had the opportunity to review the proposed contract with Secretary Babbitt and the committees of jurisdiction in both the House and Senate. If the result is that it becomes necessary to extend the current contract for an interim period, so be it. Delaware North has already indicated it intends to retain much of the existing Yosemite Park & Curry Company management team, so a delay in awarding the contract to a new concessioner will have little effect on services to the park visitor.

What is important, indeed critical, is that the new Administration seek to fundamentally change the status quo in Yosemite Valley, and begin the long overdue effort to make that Valley what it once was and should again be— one of the beautiful places on earth.

In 1948, the year I was born, Ansel Adams wrote to a Park Service member of an Interior Secretary's commission, "I have seen Yosemite progress from a relatively natural area to a cleverly controlled resort"... The fact is that many of the people who operate concessions in the national parks DO and WOULD subscribe to any desecration in these areas for the sake of profit." It is time to end the desecration of our national parks, and Yosemite is the right place to start.

Thank you.

Mr. VENTO. Thank you.

One clarification, Mr. Tipton. Is The Wilderness Society a party in any litigation related to the Yosemite concession contract or process for selecting the next Yosemite concessioner?

Mr. TIPTON. Mr. Chairman, we are not.

Mr. VENTO. How about the other groups represented on this panel? Ms. Sease?

Ms. SEASE. We are not.

Mr. MALLEY. No interest whatsoever.

Mr. VENTO. The National Parks and Conservation Association is not.

Mr. PRITCHARD. No.

Mr. VENTO. Mr. Malley you are not a party.

Mr. MALLEY. No.

Mr. VENTO. Well, there was some suggestion earlier that some of the conservation groups were involved in this in terms of the litigation.

Chairman Miller wanted me to convey his regrets at having to leave and make the final vote and then get into a meeting this afternoon. His interest in this matter, and my interest in it, I expect it is evident to those present during the course of the day.

I think the last panel obviously is offering some very important testimony because you are not part and party of the negotiations and really observers of the process and interested in what the final outcome may bring.

Part of the problem I see with this issue is the whole issue of the possessory interest and the expiration of that, along with the sale of Yosemite Park and Curry Company by MCA. This was obviously Secretary Lujan's goal. When he talked to me early on before he began entering into this agreement, he asked for support and some opportunity to proceed forward with it. We obviously encouraged him because I think that unlike his predecessors in the last decade, I think that he legitimately saw this as a problem, as an issue that he wanted to deal with. Of course, out of this grew a lot of different results.

The objective, I think just looking at it and trying to assume that it was in good faith, was to buy back the possessory interest and to provide for the transfer of the ownership of this to the point where the United States, or at least the Park Service, would not have to deal with a possessory interest in Yosemite Park, a sizable possessory interest.

Is there anyone here that disagrees with the objective that the Secretary sought?

Mr. PRITCHARD. Mr. Chairman, we not only support it, but we supported, as you know, concern about the preferential right of renewal, all these various points, a fair and open process.

The one point that I would suggest to you is that in this particular arrangement, if we continue to do this, we will continue to have inflated prices, and I think that is something that came up this morning. No one clearly had a process by which they established the value of the cleanups, the value of all the contracts, the golden parachutes, all these things which went beyond the time frame of the contract. So, what we have now is to me a very enlightening hearing in which we saw that even when a contract is over, major

elements of the relationship to a concessioner continue beyond that time frame.

Mr. VENTO. I think it is true. I think one of the problems with the Yosemite Park and Curry Company, the possessory interest and other values that they have, it is very difficult to appraise something in Yosemite Valley or Grand Canyon or anyplace where possessory interest may occur. How do you go about an appraisal process in this particular instance to come up with anything that is really valid?

Mr. Malley.

Mr. MALLEY. May I respond in a different light? I basically worked at very great lengths to get the equity issue on the table, and I approached Manuel Lujan with these concerns. It was a good Reaganomics approach, that we start generating money, pay as you go, you put the money back.

The possessory interest, as well as the preferential right, were very clear objects in the way of getting what is right for Yosemite National Park competed for. We were after a potlach, to use a Quaquido Indian term. We were really after saying let's clear the table so we have an even playing field, so you can get a whole bunch of folks to come to the table and offer what is best for the park. The issue was never how much money you are going to get out of these folks and how much money you are going to take out of the park. Possessory interests, preferential right were obstacles for getting the best quality bids on the table.

When they got finished with this process, Congressman Vento, there was no qualitative evaluation whatsoever. Possessory interest and preferential right became the final straw. It is back to a lobbyist and lawyer issue. Clearly it was the quality of the park that was being discussed all along, not the finances.

Mr. VENTO. Well, I understand that one thing drove another, as I said and observed, that you had to have apparently the flow of revenue because there was a determination that there would be no public allocation to extinguish the possessory interest and/or for the transfer of the ownership of the business, along with its good will I guess, for lack of a different description, because there is no value apparently. There may be some personal assets, but there is not much. So, there is no real value. In fact, we think it was demonstrated this morning and this afternoon that the working capital requirements may be in excess of \$5 million or \$6 million in terms of in the deficit area. So, I don't know what is happening.

My staff pointed out, Mr. Tipton, you pointed out your interest in the year of your birth, 1948. He showed me some of the first complaints about the Yosemite contract were dated 1947 in which there were complaints about the fact that there was an inappropriate concession profit, at least as a headline in the paper. Whether in fact that was the case, I think is another matter. But in any case, this is not an issue that is new.

Then, of course, it is followed by articles from 1956 talking about the plan, and 1975, and probably in 1980 we get to the Tipton role dealing with his subcommittee work on the Hill here. So, from that particular point, you can move forward and probably recall the headlines yourself, Mr. Tipton. But I thought it would be worth-

while to point out that these clips exceed your age by at least a year. As they would say to me, Mr. Vento, you're not that young.

Mr. TIPTON. I tell you it reveals to you, for someone who spent most of their professional life in environmental advocacy, how long you can work and how little you can accomplish.

Mr. VENTO. Well, I think the question here is, though, that this is a dynamic process and one in which I am certain if various individuals were not involved, that the outcomes would have been much different than what they are perhaps even today.

Mr. Malley?

Mr. MALLEY. Congressman Vento, we retired the first possessory interest in 1865 for \$48,000 when Abraham Lincoln decided it was a public trust and he was not going to let profit interfere anymore. We are just doing this over and over again. \$48,000, George LaMont, three homesteaders, one of the first entrepreneurs in the park, and possessory interest was deemed to be retired then.

Mr. VENTO. It was called a reservation then I think.

Mr. TIPTON. Just to follow up, Mr. Chairman, your comment about the history of this issue, I would use that to implore you to consider that this is one of those moments in history where this Congress and this administration can do something about Yosemite, can do something about that history.

Mr. VENTO. Taken the work that has been done the past year, obviously, I could have held more hearings. I could have got into more details, but obviously the focus of this comes when we are on the threshold basically of making a decision. That is the nature of how we all function, that you are giving enough running room until you get down to that point. I expect that as we looked over the history of what had happened here or the track record the past year in terms of the process, we point out where there were some critical points, where some suspect there were errors made, where there were omissions. So, that is what I heard a good deal of, and have been exploring that this morning myself.

I cannot change history, but I think we can actually use some of the information that we have here in order to try and rectify what seems to be a controversial conclusion at this particular point in terms of either working through the contract process with Delaware North or in some other ways that would treat them and treat other bidders in a fair manner.

Mr. PRITCHARD. Mr. Chairman, we gave you specific recommendations on the lessons from this, but without reform of the Concessions Policy Act of 1965, there is little that can be done other than technical clarifications, questions that still have not even been raised. How is the National Park Foundation able to do the things that it did in this whole process?

Mr. VENTO. Well, that is a legal question.

Mr. PRITCHARD. A lot of other interesting legal questions.

Mr. VENTO. I do not know that we can separate or deal with that, but you are probably correct. I think they were looking for a vehicle.

But since there tends to be agreement in terms of the capital improvement fund and the government improvement account in lieu of collecting a franchise fee, a more relevant question is relative to the basic agreement. What types of changes could be accorded it?

That would certainly change the complexion of some of the concerns that have been raised here today about the control of it, the amount that goes into it.

Obviously this is not signed. It was a minimum 5 percent. We are saying it has been reduced to 4.5 percent by virtue of what is about to be executed in a contract I guess and/or reduced even further perhaps in 4 years, depending upon the flexibility that the Park Service takes unto itself with regard to that.

But there is no way on a micromanagement basis that I could, as a committee chairman or Member of Congress, negotiate the contracts for the Park Service. At some point you are going to have to say the Mike Finleys and Jack Davises and the Manuel Lujans of the world are going to have to negotiate these contracts.

Mr. PRITCHARD. You have right now, Mr. Chairman, over 500 different contracts in which we could be in a similar situation where each one will have special nuances, as we have seen in this contract. Then you have the overall process, and that is what we recommend there be an assessment of. I think it is unfortunate that because we have to deal with that, we often lose sight of the broader issues that the other panelists have wisely brought up, and that is what it is we are trying to save, and that is one of the greatest places in the world.

Mr. Chairman, I think there was another point here.

Mr. VENTO. Yes, Ms. Reiss?

Ms. REISS. I just hope you do not look at this that we are in a final stage here. For example, just the question you raised about possessory interest. This is not really a mystical process. It happens in hotels and resorts all the time, and people look for comparables.

Unfortunately, the Park Service has a history of being poor planners. Just this very process in Yosemite, we are missing a housing plan for employees. We are missing a transportation plan. All of this should have been done way before we got to the stage we are at now where we have a new concessioner, and yet it has not been.

I would urge you to remember, of course, that there is no longer a Manuel Lujan. There is now a Bruce Babbitt, and for just that very reason, there is a time to reassess. There is a time that is within the scope of Congress and in the scope of Secretary Babbitt to really call for a new panel, take best and final bids. This is not an inordinately lengthy process, and the park will so benefit from what we are talking about.

This is a major step. This contract will set the stage for what is to come. We are not dealing with 15 years. More likely we are dealing with 30 because there is a preferential right of renewal. The Park Service moots that a bit, but the reality is it is there unless Delaware North were to be a scandalous operation. At the very least I urge the Secretary to reopen the process and wait until we get a new Park Service Director.

Mr. VENTO. Well, for the moment, it is obviously in Secretary Babbitt's hands. Obviously, there is great pressure to address the questions with regard to the Concession Policy Act of 1965. I do not know that everyone has equal ardor to enter into it.

I think the preferential rights issue does remain, of course, and it is rooted in the 1965 Act. I think that it probably has been overly interpreted and benefitted from by some.

I think we are very concerned about differentiating in the various contracts. We have these type of mega-contracts, you might say, as opposed to some that are much smaller and much more marginal and really represent a different category of business in terms of what they do.

You have all been helpful. I do not mean to cut you off. I wanted to be patient, but I have other votes and other commitments that I have made. I want to thank you very much for your testimony. We will continue to watch and wait for the Secretary to try to digest what has been explored today, and hopefully it is helpful. We will be working I think in the future on the overall concessions policy and hope that we can bring that to some resolution and update it for the 1990s. Thank you all very much for your participation.

The meeting stands adjourned.

[Whereupon, at 3:35 p.m., the subcommittees were adjourned.]

APPENDIX

MARCH 24, 1993

ADDITIONAL MATERIAL SUBMITTED FOR THE HEARING RECORD

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
SUBCOMMITTEE ON NATIONAL PARKS, FORESTS, AND PUBLIC LANDS
JOINT OVERSIGHT HEARING
ON CONTRACTING PROCESS AND PROPOSED CONTRACT
FOR YOSEMITE NATIONAL PARK CONCESSIONS
March 24, 1993

BACKGROUND INFORMATION

In January, 1993, just before leaving office, former Secretary of the Interior Manuel Lujan, announced selection of a winner from among 6 bidders for a concession for provision of goods and services in Yosemite National Park, California. The new concessions contract is to take effect after the September 30, 1993 expiration of a 30-year concession contract held by the Yosemite Park and Curry Company (YPC), a subsidiary of the MCA corporation (itself a subsidiary of Japan's Matsushita Corp.)

By law, any concession contract of the size and duration involved in the Yosemite case cannot be finally awarded sooner than 60 days after its submission to Congress for review. Secretary Babbitt has not yet submitted any proposed Yosemite concession contract for the period after September 30, 1993.

Today's joint oversight hearing by the Subcommittee on Oversight and Investigations and the Subcommittee on National Parks, Forests and Public Lands is intended to expedite any further Congressional review of any proposed Yosemite concession contract that may be submitted.

The hearing will examine the process by which the Bush Administration sought and evaluated the bids for a new Yosemite concessions contract; the details of the proposed new contract between the National Park Service and the Delaware North Corporation; the implications of this proposed new contract for the future management of Yosemite; and the possible significance of this proposed new contract as a precedent for concessions management elsewhere in the National Park System.

In particular, the hearing will focus on--

- 1) concessions policy as established by applicable law;
- 2) the purchase agreement under which MCA, YPC's owner, has undertaken to divest itself of YPC after MCA's own purchase by Matsushita;
- 3) the process by which the National Park Service moved to select by competitive bidding a new Yosemite concessioner; and
- 4) the proposal produced by that process--that is, the proposed concession contract with the firm selected as having submitted the winning bid--and the implications of this proposed contract for future management of Yosemite National Park and as a possible precedent for concessions management in other units of the National Park System.

I. POLICY

National Park Service concessions contracts are now primarily governed by a 1965 Act known as the "National Park Service Concessions Policy Act" (or, simply "Concessions Policy Act"): Public Law 89-249, codified at 16 U.S.C. 20a through 20g.

This Act establishes the policy that visitor facilities and services "shall be limited to those that are necessary and appropriate for the public use and enjoyment of the national park area in which they are located and that are consistent to the highest practicable degree with the preservation and conservation of the areas". The Act requires the Secretary of the Interior to encourage and enable private concessioners to provide services and operate facilities the Secretary deems desirable for accommodation of visitors, and allow the inclusion in concession contracts necessary terms and conditions to assure concessioners "adequate protection against loss of investments in structures, fixtures, improvements, equipment, supplies, and other tangible property" resulting from discretionary governmental decisions, "but not against loss of anticipated profits". Existing law also requires the Secretary to exercise authority "in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operation as a whole commensurate with the capital invested and the obligations assumed."

Concessioners' Preferential Rights

The Concessions Policy Act provides some important preferences and protections to concessioners. To "encourage continuity of operation", the Secretary is required to give "preference in the renewal of contracts or permits and in the negotiation of new contracts or permits to the concessioners who have performed their obligations under prior contracts or permits to the satisfaction of the Secretary." (This is usually referred to as a "preferential right of renewal") The Secretary may also grant present concessioners preferential rights to provide new or additional accommodations, facilities, or services in the same National Park System unit.

Concessioners' Possessory Interests

Under section 6 of the Concessions Policy Act, a concessioner who has acquired or constructed "any structure, fixture, or improvement" on U.S. lands within an area managed by the National Park Service "shall have a possessory interest therein, which shall consist of all incidents of ownership except legal title", which remains in the United States. This possessory interest does not carry with it any right to engage in business, and does not exempt its owner from any applicable laws or regulations, but it does survive the expiration or termination of a concession contract and is a property right (protected by the Constitution's Fifth Amendment against any uncompensated taking) that can be assigned, transferred, encumbered, or relinquished.

Concession Fees

The Concessions Policy Act provides that franchise or concessions fees are to be "determined upon consideration of the probable value to the concessioner of the privileges granted by the particular contract or permit involved," defined as "the opportunity for net profit in relation to both gross receipts and capital invested," but also provides that "consideration of revenue to the United States shall be subordinate to the objectives of protecting the [National Park System] areas and of providing adequate and appropriate services for visitors at reasonable rates."

Proposals to Change Concessions Policy

National Park concessions policies and the implementation of the Concessions Policy Act have been frequently reviewed. In 1980, GAO (following up on a 1975 report) recommended Federal funding of future construction of concession facilities, or amending the Concessions Policy Act "to allow possessory interest [only] in cases where it is the only way to have the facilities constructed or improved...[when] it should be amortized over a period no longer than the estimated useful life of the structure or the term of the contract, whichever is shorter." In the same report, GAO also recommended that Congress should "amend the Concessions Policy Act to eliminate the right of preference" for contract renewal and the right of first refusal to provide new or additional services.

In 1989, former Secretary of the Interior Lujan, noting that "the size, scope, and complexity of the National Park Service concession program has grown enormously" since enactment of the 1965 Act, ordered the National Park Service Director to develop options for changes aimed at assuring an appropriate level of services to visitors, provide a fair return to concessioners, and assuring proper fiscal returns to the government. A task force of Interior Department officials was formed to prepare a report on these options.

In April, 1990, the Inspector General of the Interior Department issued an audit concluding (among other things) that the National Park Service did not receive adequate concession fees from the larger concessioners; that fees charged concessioners for use of government-owned buildings were not generally based on fair rental values; that concession fees recommended by National Park Service's Washington headquarters were often reduced by regional offices on the theory that the concessioners would fund capital improvements, but that most such improvements were done to enhance the concessioners' revenue-producing facilities; and improvements were needed to enhance competition for new or renewed concession contracts. The Inspector General recommended both administrative action to improve these matters and legislation to "eliminate existing concessioners' preference in contract renewals."

At a May, 1990, Subcommittee oversight hearing, Secretary Lujan said he was acting to improve concessions policy and management, and released the concessions task force report. The report's specific recommendations included systematic, consistent, and higher concession fees; fairer payments by concessioners for use of government facilities; changes in the preferential right of renewal; a general policy of no preferential rights to provide additional services; limiting possessory interests compensation to assets' book value; modifications in contract-transfer provisions; improved Park Service concessions management; and new funding mechanisms for maintenance and rehabilitation. Work was started on new regulations to implement these proposals, but the Bush Administration opposed any concessions reform legislation.

At a January, 1991, Subcommittee oversight hearing on the Matsushita acquisition of MCA, Secretary Lujan reported that agreement had been reached for sale of YPC to an American firm. That agreement, and its impact on the process of selecting a new concessioner for Yosemite, is discussed below.

II. PURCHASE

The Matsushita acquisition of MCA prompted Secretary Lujan to pressure MCA to transfer YPC to an American firm. Secretary Lujan first asked MCA to donate YPC to the National Park Foundation ("Foundation"), a nonprofit corporation chartered by Congress to accept and administer gifts benefitting the National Park System; MCA refused. The final agreement provided for the Foundation to act as a middleman: the Foundation is to purchase 100% of YPC's stock for \$61.5 million, with YPC waiving its statutory preferential right of renewal of the concession contract. The Foundation will then assign its rights to the new concessioner, who will pay MCA the purchase price either in cash or in monthly installments over 15 years at an annual interest rate of 8.5%.

The purchase price of \$61.5 million (\$49.5 million plus accrued interest from February 1, 1991 to September 30, 1993) was not based on any formal appraisal of YPC's assets (including its possessory interests in Yosemite facilities), but was negotiated between MCA and the Foundation and approved by the Interior Department on the basis of MCA's asking price and the National Park Service's estimates of projected cash flows from Yosemite concessions operations. The purchase agreement covers not only YPC's assets in Yosemite but also out-of-park assets such as a warehouse and a computerized reservations system.

A new concessioner will also acquire two contingent liabilities: for a Superfund site, and for potential payments to certain YPC executives if their employment is terminated before 1995.

GAO has reported that the Foundation lacks authority to participate in the transaction, and that its involvement was unnecessary anyway, since the Department of the Interior (for whom the Foundation evidently is acting) has adequate authority to do so.

III. PROCESS

On April 6, 1992, the National Park Service distributed initial information and a "Prospectus--Part I" to those expressing an interest in obtaining the next Yosemite concessions contract, in order to identify firms "financially and managerially likely to be competitive" and interested in receiving a more detailed statement of requirements. Recipients of the "Phase I" document had 60 days to submit application documents, to be reviewed to determine if an applicant had demonstrated substantial competence to effectively manage a complex service-oriented business activity and an ability to provide at least \$12 million of initial equity capital to undertake concessions operations.

From a review of responses to the Phase I document, the National Park Service identified 12 applicants to be qualified to submit offers in Phase II. The Phase II document, a full Statement of Requirements ("SOR") for Yosemite concessions bidders was issued on July 15, 1992.

The SOR provided more detailed information about the purchase agreement between MCA and the Foundation, including the fact that the new concessioner would be required to reimburse Foundation direct expenses of \$521,000. The SOR also specified that the successful bidder would be required to form a subsidiary with the sole purpose of operating Yosemite concessions, and that this subsidiary would be the survivor in a merger with YPC. The SOR indicated that "due to the complex nature of the security agreement involved", the National Park Service preference was to award the contract to a bidder who would pay cash to MCA for the acquisition of YPC, rather than taking the alternative of acquiring subject to MCA's note.

The SOR made clear that offers based on proposed modifications of the purchase agreement would not be acceptable, and that the new contract would provide for extinguishing of YPC's possessory interests in Yosemite through amortization over the 15-year contract term (the new concessioner receiving over 15 years free use of the improvements involved). The draft contract included in the SOR called for creation by the concessioner of a Capital Improvement Fund ("CIF") for improvements, and applicants were asked to indicate the percentage of their gross monthly receipts from Yosemite concessions operations that they were proposing to deposit into such a fund. The SOR stated that while applicants could make whatever proposals they wanted, "the [National Park] Service, in its internal analysis, has determined that a CIF proposal of less than five percent (5%) is likely to be considered insufficient."

On November 18, 1992, the National Park Service announced that completed bids for the new, 15-year Yosemite concessions contract had been submitted by 6 companies, and that bid evaluation would begin on December 1, 1992, with a recommendation to be presented to the Director of the National Park Service on December 16, 1992.

The 6 bidders were (1) JMB Realty (Amfac Resorts, Inc. dba Fred Harvey Co) of Chicago; (2) National Resource Management, Inc., of Santa Ana, California; (3) TW Recreational Services, Inc. of Spartanburg, South Carolina; (4) Yosemite Park Services L.P. of Beverly Hills, California; (5) YRT Services Corporation of San Francisco, California; and (6) Delaware North Companies, Inc. (Sportservice Corporation) of Buffalo, New York.

A National Park Service selection panel, chaired by the Associate Director for Operations and aided by an evaluation panel and non-governmental consultants, reviewed the 6 bids. By memorandum of December 17, 1992, its Chairman advised the Deputy Director that it considered the Delaware North bid the best overall, and the only one rated satisfactory on all selection criteria.

Based on this and the "substantial weaknesses of all other offers received with respect to principal selection factors", the selection panel recommended award of the contract to Delaware North. The Deputy Director concurred, and on the same day, Secretary Lujan and National Park Service Director Ridenour issued a press release announcing Delaware North's selection.

The press release quoted Secretary Lujan as saying "Delaware North was the only finalist which was rated satisfactory with respect to all selection criteria." It quoted Director Ridenour as saying "Delaware North budgeted the most money for environmental cleanup and placed no cap on its environmental mitigation responsibilities. They were not the highest bidder monetarily--they were close--but, overall, their proposal represents the best prospect to provide quality visitor services and to enhance the environment of Yosemite National Park."

On January 11, 1993, YRT Services Corp. filed suit against the United States seeking to enjoin award of the contract to Delaware North, alleging that YRT's bid was the best overall offer, the National Park Service had improperly disqualified YRT and failed to give YRT's bid full and fair consideration, and the proposed award to Delaware North violated applicable law, regulations, and guidelines. As of March 20, 1993, no decision had been rendered on the case.

By law, the Secretary of the Interior cannot award a concession contract of such size and duration sooner than 60 days after its submission to Congress. As of March 21, 1993, no proposed contract for concessions in Yosemite National Park after September 30, 1993 had been submitted.

On February 26, 1993, Yosemite Park Services, Inc. ("YPS") wrote Secretary Babbitt, asking that its application be reviewed and reevaluated, contending that "The Park Service Selection Panel misunderstood our offer" and had erred in its evaluation process, and saying "At the very least, we should have the opportunity to rectify this misunderstanding" as to YPS's compliance with the requirement to demonstrate a funding commitment of \$12 million in initial equity for working capital.

IV. PROPOSAL

As noted above, the proposed new concession contract would be for 15 years, during which time the concessioner would not pay a concession fee (i.e., no fee that would be deposited into the national Treasury) but instead would deposit funds into a Government Improvement Account and a Capital Improvements Fund.

The Government Improvement Account is to be used to fund projects for rehabilitation and improvements of government facilities directly supporting concessions or other improvements specifically required by the contract. Projects would be subject to approval of the National Park Service. At the end of the contract term, or upon its termination, any balance remaining in the account would be transferred to and used by the next concessioner in the same way or, if there is no new concessioner, would be deposited into the national Treasury.

The Capital Improvements Fund would receive monthly deposits equal to a fixed percentage of the concessioner's gross receipts for the previous month. This fund is to be used for improvements selected by the National Park Service to facilities in which YPC had a possessory interest, but the new concessioner will not acquire any possessory interests in improvements financed from this fund. Any balance remaining in the fund at the expiration or termination of the contract is to be transferred to the next concessioner, if any, or (if there is none) deposited into the national Treasury.

The draft contract includes provisions for termination for default or if necessary to enhance or protect resources or visitor enjoyment or safety. It provides that upon expiration or termination, the concessioner, if requested, will continue to conduct operations for a reasonable time to allow selection of a successor or will consent to use by a temporary operator of the concessioner's facilities in return for a pro rated annual fee equal to depreciation (either on straight-line basis or on the basis used by the concessioner for Federal tax purposes) plus a return on book value equal to Federal Reserve prime lending rate.

The draft contract provides that upon its expiration or termination, the concessioner will transfer its possessory interests to the next concessioner at original cost less straight-line depreciation over estimated useful life not exceeding 30 years. A successor concessioner cannot revalue any such possessory interest or alter the method of depreciation or the 30-year limit. If operations are discontinued and improvements are abandoned or removed, any possessory interests will be acquired by the United States on the same basis.

If the new concessioner will not acquire YPC for cash, the new concessioner would be subject to the terms of the note securing MCA, and the proposed contract would have to be modified accordingly in certain respects..

News

Committee on Natural Resources

George Miller, CHAIRMAN
U.S. House of Representatives
Washington, D.C. 20515

FOR IMMEDIATE RELEASE:
Thursday, March 11, 1993

CONTACT: Daniel Weiss, 202/225-2095
Kerri McClimen, 202/225-6631

DATE SET FOR YOSEMITE CONCESSIONS CONTRACT OVERSIGHT HEARING

WASHINGTON -- Representatives George Miller, D-Calif., and Bruce F. Vento, D-Minn., today announced the scheduling of an oversight hearing on the proposed Yosemite National Park concessions contract.

The joint hearing will be held Wednesday, March 24, at 10 a.m. in Room 1324 Longworth Building before the Subcommittee on Oversight and Investigations, chaired by Rep. Miller, and the Subcommittee on National Parks, Forests and Public Lands, chaired by Rep. Vento. Rep. Miller is also the chairman the full Natural Resources Committee.

The Subcommittees will examine the process by which the Bush Administration sought and evaluated bids for a new Yosemite concessions contract and the details of the proposed new contract. The panels will also examine this contract's implications for the future management of Yosemite and its possible significance as a precedent for concessions management in other national parks.

The Yosemite concessions contract is the largest concessions contract in the national park system in terms of revenue, expected to produce receipts that will exceed \$85 million per year over the 15-year life of the agreement. The current concessioner is the Yosemite Park and Curry Company (YPC), whose contract is due to expire September 30 of this year.

Since 1973, YPC has been owned by MCA, Inc., which in 1990 was in turn acquired by Matsushita, Inc., a Japanese corporation. In 1991, the National Park Service, the National Park Foundation and Matsushita Corp. reached agreement to end YPC's role as the Yosemite concessioner. Under the agreement, the Park Service was to select a new concessioner who would pay for the YPC assets in Yosemite. A competitive bidding process to select the concessioner was initiated. In January, 1993, then-Secretary of the Interior Manuel Lujan chose the Delaware North Corp. of Buffalo, NY over five other competitors.

The final contract has not yet been transmitted to Congress by Interior Secretary Bruce Babbitt. The law requires the Secretary to send the contract to Congress and wait 60 days before he is allowed to sign it.

Anyone wishing to testify at the hearing should contact the Natural Resources Committee no later than 5:00 pm EST on Friday, March 19th at 202/225-2761.

###

GEORGE MILLER, CALIFORNIA, CHAIRMAN
 PHILIP E. SHARP, INDIANA
 EDWARD J. MARKEY, MASSACHUSETTS
 JUSTIN J. SIMPSON, PENNSYLVANIA
 BENJ. G. RAINAL, N. WEST VIRGINIA
 DAVID F. VENTRO, ILLINOIS
 PAT WILKINS, MONTANA
 RON W. LUGO, VIRGINIA
 EARL B. JOHNSON, CONNECTICUT
 RICHARD W. KENNAM, CALIFORNIA
 BILL RICHARDSON, NEW MEXICO
 PETER A. BRADLEY, ILLINOIS
 CH. F. FALCONE, ARIZONA
 THE JOHNSON, SOUTH DAKOTA
 LARRY LARSON, IDAHO
 MRS. ARMSTRONG, TEXAS
 CALVIN H. GOSSETT, CALIFORNIA
 CAROL W. HENDERSON, PUERTO RICO
 KENNETH B. BROWN, ARIZONA
 CLAYTON B. BROWN, UTAH
 NATHAN DEAN, GEORGIA
 RALPH D. HENCKEY, NEW YORK
 ROBERT A. UNDERWOOD, MISSOURI
 PETER T. HARRIS, KANSAS
 DONALD L. BERNARD, CALIFORNIA
 LANE EVANS, ILLINOIS
 DONALD J. BARNETT, KENTUCKY
 DONALD W. BARNETT, WYOMING

U.S. House of Representatives
Committee on
Natural Resources
 Washington, DC 20515-6201

March 29, 1993

DON YOUNG, ALASKA
 RICHARD B. FULFORD, ALABAMA
 JAMES V. HANSEN, UTAH
 BARBARA F. VUCANOVICH, NEVADA
 ELTON GALLEGLY, CALIFORNIA
 ROBERT F. SMITH, IDAHO
 CRAIG THOMAS, WYOMING
 JOHN J. DUNCAN, ARIZONA
 JOEL HENRY, COLORADO
 JOHN J. DODD, CALIFORNIA
 WAYNE ALLARD, COLORADO
 RICHARD W. BAKER, LOUISIANA
 KEN CALVERT, CALIFORNIA
 SCOTT WATKINS, COLORADO
 RICHARD W. POUND, CALIFORNIA
 JAY BICKEL, ARIZONA

DAVID F. BROWN
 STAFF DIRECTOR
 DONALD WILSON
 GENERAL COUNSEL
 T. DANIEL VAL DESI
 REPUBLICAN STAFF DIRECTOR

Mr. Herbert S. Cables, Jr.
 Acting Director
 National Park Service
 Department of the Interior
 Washington, DC 20240

Dear Mr. Cables:

On March 24, 1993, Associate Director John H. Davis testified at a joint Subcommittee oversight hearing on the process for selection of a new concessioner at Yosemite National Park and the proposed concession contract resulting from that process.

To supplement Mr. Davis's testimony, I would appreciate the prompt receipt of answers to the following additional questions:

1. Under the terms of the agreement and financial arrangements for transfer of the Yosemite Park and Curry Company (YPC) to a new concessioner, what portion of each payment by the new concessioner will have the effect of reducing YPC's possessory interests in Yosemite National Park, and what portion will instead be payment for other assets of YPC and interest?
2. Under what circumstances (aside from action by the Secretary to terminate the concession contract) could action be taken by MCA or other party to whom such payments are owed in order to protect such party's security interests with respect to the transfer of YPC, and what results could this have on the relationship between the concessioner and the National Park Service? In the event of such action, what options would be available to the government to assure that all YPC possessory interests in Yosemite would be extinguished at the end of the 15-year life of the proposed contract?
3. The proposed contract evidently specifies that neither the Government Improvement Account nor the Capital Improvement Fund can be used to defray the costs of "routine, operational maintenance of facilities or housekeeping activities" and that nothing in the requirement for payments into that Account and Fund

Mr. Herbert S. Cables, Jr.
March 29, 1993
Page 2

"shall lessen the responsibility of the Concessioner to carry out the maintenance and repair" of either government or concessioner improvements. Assuming that the proposed contract is finalized, what steps would the National Park Service take to assure that the required "routine, operational maintenance" was carried out by the concessioner? Would the Service expect to prepare and periodically revise a maintenance schedule or similar plan? What role would the concessioner play in determining what maintenance was required and how it would be carried out?

4. What mechanisms does the National Park Service plan to establish in order to account for the purposes for which disbursements would be made from the Government Improvement Account and the Capital Improvement Fund?
5. The proposed contract evidently would leave open the possibility that the new concessioner could expend its own funds (rather than make use of disbursements from the Government Improvement Account or the Capital Improvement Fund) to make investments in Yosemite of the type which, under law, would result in the concessioner obtaining a possessory interest, (although Section 13(b)(2) of the draft contract distributed to bidders does specify how such possessory interest would be valued). Why should any such investments--and the consequent obtaining of possessory interest--be permitted? Isn't it exactly to avoid such a result that the Capital Improvements Fund would be established? What steps will the National Park Service take to prevent such investments and the acquisition of such possessory interests by any new concessioner?

Because of the importance of these issues, and so that we can take the requested information into account in consulting with Secretary Babbitt on this matter, please provide answers to these questions no later than the close of business on April 7, 1993.

Sincerely,



Bruce F. Vento
Chairman, Subcommittee
on National Parks,
Forests and Public Lands

cc: Chairman George Miller



United States Department of the Interior

NATIONAL PARK SERVICE
P.O. Box 37127
Washington, D.C. 20013-7127



IN REPLY REFER TO

APR 12 1993

C3823(680)

Honorable Bruce F. Vento
Chairman, Subcommittee on National
Parks, Forests and Public Lands
House of Representatives
Washington, D.C. 20515-6201

Dear Mr. Vento:

We are pleased to be able to respond to your letter of March 29, 1993, requesting further information about five questions concerning the new concession contract at Yosemite National Park.

1. As of the closing, Yosemite Park and Curry Company will give up its claim to possessory interest compensation. The new concessioner will have no such interest in existing real property assets. In place of the Music Corporation of America's, Inc. (MCA), current contract rights to be compensated by either the Government or a successor, is a right to be paid a specific amount of money by the new concessioner. The right will be documented in the form of a loan to the new concessioner for the entire amount owed and is secured by collateral in the form of a lien on the assets of the company at the time of transfer. Possessory interest is eliminated in favor of the loan. For this reason, there is no possessory interest buy down to account for.

2. The new concessioner will be responsible for the payment of the loan provided by MCA. If there is a default under the Note or Deed of Trust, the holder of the Note can assume control of the property and select a substitute concessioner. Personal property not necessary to carry out the obligations of the contract can be sold but the proceeds must be paid against amounts due on the Note. The substitute concessioner assumes the obligations of the concession contract and the Note and Deed of Trust.

The Director's right to terminate a concessioner remains intact. In such a case, the holder could nominate a new concessioner.

If the Note and Deed of Trust should remain unpaid at the end of the current contract the Director must require a new concessioner to pay off the balance due or allow the holder to nominate someone to do so. That would be under the terms of the then new contract.

3. The draft Concession Contract at Section 5 includes three ideas: (1) that the concessioner is responsible for all maintenance of both concessioner and Government improvements, (2) that the Government will periodically inspect their work, and (3) that there will be a Maintenance Plan.

The concessioner carries out its maintenance responsibilities with an extensive maintenance program through its own employees and a variety of contract services.

The Service requires its concessioners to conduct maintenance within the guidelines provided in Maintenance and Operating Plans, Exhibits I and J to the contract, and then evaluates the results through a systematic oversight program. The plans are developed in consultation with the concessioner but are ultimately under the control of the Superintendent.

As part of the National Park Service's Concessioner Review Program, park staff conduct formal periodic evaluations of each concessioner facility. These are done a minimum of three times each year for year-round facilities and twice per year for seasonal facilities. The manner in which facilities are maintained is an integral part of these formal evaluations and, where necessary, specific corrective actions are required by a stipulated date. This program yields an annual rating concerning the quality of performance. Its application provides a forum for discussion and resolution of problems, including maintenance problems.

In addition, and based upon the Maintenance Plan, park and concessioner staffs will conduct annual joint inspections of all facilities used by the concessioner to determine the maintenance work needed.

Based on the annual joint inspection and deficiencies noted during periodic evaluations, and as further required by the Maintenance Plan, the concessioner will prepare a list of maintenance needs and an annual maintenance program proposal which will be submitted to the park Superintendent for review and approval. This annual maintenance program will list specific projects and the manner in which the concessioner intends to execute its maintenance responsibilities for the year.

With the contract requirements, the Concessioner Review Program, the extensive Maintenance Plan included in the contract, and the use of the audited Annual Financial Report required from the concessioner to monitor the amount of money spent on maintenance, we have good control of the maintenance area.

4. Disbursements from the Government Improvement Account and from the Capital Improvement Fund are controlled through the procedures at Contract Exhibit G. Before funds are spent from either source, a project must be nominated (see Exhibit G, Attachment 1) and prioritized. This is done by the park and reviewed by the Regional Director.

The general purposes of the account and of the fund are described in the contract language including Exhibit G. The fund is small and will be needed, for the foreseeable future, to do historic preservation on the Wawona Hotel, which was built at the turn of the century and still used as a hotel. The account will carry out the projects required by the Concession Services Plan and the Housing Plan. The range of activities is very diverse including demolition, new construction and rehabilitation.

The Exhibit G procedure should allow us to establish priorities in an orderly way and respond to difficulties as they arise. The park expects to hire an engineer and a Financial Analyst to focus on this work. Those requests are included in the park's 1994 budget request.

5. The inclusion of a contract clause providing for possessory interest does not give the concessioner a right to make such an investment. The Service's approval is required prior to making any capital investment, including those in which a concessioner may gain a possessory interest. A possessory interest investment by the concessioner would only be approved in the unusual circumstance where the Capital Improvement Fund was insufficient to properly fund a needed facility or capital improvement, and then only with specific Service approval.

We agree that we are better off if possessory interest is managed or limited. We agree that the structure of the Government Improvement Account or Capital Improvement Fund allows us to avoid the possessory interest issue. That is one of the advantages of such arrangements. The final language at section 13(b)(2) of the concession contract values possessory interest at original cost less straight line depreciation over the useful life of the asset but not to exceed 30 years and without revaluation.

Sincerely,



Herbert S. Cables
Acting Director

STATEMENT BY:
NATIONAL PARK HOSPITALITY ASSOCIATION
BEFORE THE
NATURAL RESOURCES COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

MARCH 24, 1993

Mr. Chairman and Members of the Subcommittees:

As you know, our organization represents the companies, many of which are small businesses, family companies, which provide visitor services in the National Parks. We have been known for many years as The Conference of National Park Concessioners, but in our Annual Meeting this year, our membership voted to amend the name to National Park Hospitality Association because they felt those words better expressed what our members do.

We, obviously, have an interest in what is happening in National Park concessions contracting and especially, at this time, the forthcoming contract with the new concessioner at Yosemite National Park. Since the actual text of the new contract is not yet known, we will address our remarks to both the procedure of this contract award and to some of the basic principles which we feel must be considered for every fair and balanced concessions contract in the future.

USE OF NATIONAL PARK FOUNDATION

When the ownership of Yosemite Park and Curry Co. was available for purchase sometime ago, then Secretary of Interior, Manuel Lujan, Jr., improperly injected the services of the National Park Foundation into the sale and transfer arrangements. National Park Foundation, organized as a fund-raising support organization for the National Park Service, was used as the holding agent for the majority of stock of Yosemite Park and Curry Co., pending the selection of a new concessioner following the September 1993 expiration of the present contract.

The purpose of using the Foundation was simply to have an organization in control of the incumbent concession company so that the preferential right of renewal, a provision of the expiring contract, and a provision of the National Park Concessions Policy Act, would be waived when the new prospectus was presented soliciting responses for the new contract term. This was accomplished of course since the Secretary of Interior is the Chairman, and the Director of the National Park Service is the Secretary of the National Park Foundation, and their desires were implemented by the Foundation control of the incumbent company.

This raises serious questions of conflict of interest and diminishes the value of the Foundation for legitimate and important functions for which it was created. The serious mistake of using the National Park Foundation in this manner should not be repeated because ultimately it will plunge the Foundation into issues it is not capable of handling and its usefulness will be severely reduced.

USING THE CONTRACTING PROCESS TO DEPRIVE ACCESS

There is a misconception that Yosemite National Park is more crowded than ever and that public access must be limited. The truth is that far more visitors stayed overnight in the park during the 1950's than today. National Park Service figures show that during the 1950's 50,000 persons stayed overnight in Yosemite in the peak season, as compared with 7,600 persons per night during the peak seasons of the past 28 years! The General Management Plan for Yosemite sets overnight visitor use at 7,711 persons, which the present use has not yet reached.

There has been no new construction by the present concessioners for 20 years and since MCA took over management 18 buildings, a woodyard, and a storage area have been removed from the east end of Yosemite Valley, freeing up over 5 acres of land. Yosemite Park and Curry Co moved reservations, purchasing, freightlining, warehousing, large vehicle maintenance and a commercial laundry from Yosemite Valley in the early 1980's.

Much attention is given to the traffic problems of Yosemite. The truth is that 600 parking places have been removed by NPS with no alternative parking or transportation put in place. Rangers are used for traffic control but are only needed about 5 times a year. It is not logical to consider extreme solutions such as monorails, or steam, electric or solar trains, nor parking garages, in order to bring immediate and effective improvement to the traffic problems.

Not it is understood that in the new concessions contract there may be plans to actually reduce lodging by 15% and to reduce other services in the park and it would appear that the contracting process has been used, despite the accomplishments enumerated before, to reduce public access. About 94% of the land area of Yosemite National Park is now in wilderness classification. A very small percentage of the entire land area is seen by the visitors and less than 1% of the land area of the park is utilized for all visitor services, including facilities and roads. Alternatives for the management of visitors at certain times may be necessary but the concessions contracting process should not be used to limit access.

What is needed in the National Parks is encouragement for the visitors to stay long enough in the parks to participate and become educated in the interpretive process, to understand the significance of the values of our National Parks, and then to translate that understanding into tangible citizen support for National Park Service needs at the community and governmental levels. This cannot be accomplished by reducing public access and erecting barriers to visitor usage and enjoyment.

GOVERNMENT ACQUISITION OF POSSESSORY INTEREST

Part of the reality of the new contract will be the government ownership of what has been Yosemite Park and Curry Co.'s possessory interest in visitor facilities. For this transfer of the security interest, not to be confused with fee simple title which always vested in the government, the new concessioner must pay MCA a reported \$62 million plus interest over the payout during the contract term. What result can be expected from this change?

With the exception of the Ahwahnee Hotel, which has historical significance, most all other buildings involved are utilitarian buildings used to serve the visitors. There is no special meaning in having the security interest or possessory interest acquired by the government because the buildings will continue to serve the same purpose as before. There are, however, several adverse results which should be carefully considered: (1) With complete ownership in the government, there will be no incentive for concessioner investments in the facilities, except for required ordinary maintenance. During its tenure, MCA reinvested more than \$128 million through 1991 in capital, repairs and maintenance and in environmental remediation expenses. The capital alone is approximately 75% of the net income earned by MCA; (2) the loss of tax revenue to local jurisdictions, such as Mariposa County, will be substantial since the possessory interest of the concessioner is the basis of the largest private tax base in the county, yielding substantial amounts for the support of schools, roads and other needed county services. Thus, what appears to some as a great gain for the government may likely result in unnecessary financial burdens with direct adverse effects upon local government; (3) As the government acquires the concessioner's possessory interest in the facilities, there will be added to the number of National Park Service regulators additional personnel to oversee repairs, maintenance and the environmental quality of the management of each function. This inevitably means a greater human impact in the park with more employees requiring housing, schools and roads in addition to the added taxpayer burden for salaries and benefits; and (4) With private-sector investment in park facilities comes an appreciation in the value of those assets which provides an incentive for the private sector to enhance the value of that investment. Government acquisition of possessory interest means that this incentive is lost resulting in greater inefficiencies.

THE EFFECT OF COMPETITIVE BIDDING ON THE SELECTION PROCESS

When Congress attempted to define the balance between fees paid and other considerations of importance in selecting a concessioner, it wisely intertwined several objectives. Section 3 (d) of the National Park Concessions Policy Act (P. L. 89-249) directs that franchise fees as a percentage of the gross revenue "shall be determined upon consideration of the probable value to the concessioner of the privileges granted". Then it defines that value as "the opportunity for net profit in relation to both gross receipts and capital invested". But the restraint placed on the concept of awarding contracts to the highest bidder is significant. The Act states: "Consideration of revenue to the United States shall be subordinate to the objectives of protecting and preserving the areas and of providing adequate and appropriate services for visitors at reasonable rates".

If the objective of awarding concessions contracts to the highest bidder is paramount, then the spirit of that balance is lost. The National Park Service must weigh many factors, including the amount of fees to be paid, in awarding contracts. There is no suggestion here that the company selected is not worthy or entitled to the contract award, but only to question what appears as an unusual attention paid by NPS to the bid figures. This is ironic when it appears that the actual franchise fee to be paid under the new contract would be "nothing". The present concessioner which has been criticized for paying a low fee of .75 of 1% gross has also invested millions in the facilities, with after-tax profit for 1991 of \$5.3 million on revenues of \$87.2 million or 6% of gross, below many industry averages.

Congress wisely saw that an unprofitable concessioner would be of no value to the National Parks, unable to pay its fees and unable to adequately serve the visitors satisfactorily. It provided in the National Park Concessions Policy Act the directive that "The Secretary shall exercise his authority in a manner consistent with a reasonable opportunity for the concessioner to realize a profit on his operations as a whole commensurate with the capital invested and the obligations assumed".

The danger of the emphasis on the high-bid, competitive system is that it is difficult to obtain the balance outlined by the statutory guidelines with this procedure. A heavy reliance on high fees as the paramount factor in selecting concessioners could produce many problems for the National Park Service in the future.

WHATEVER HAPPENED TO BUILDING PARTNERSHIPS?

In conclusion, one might ask: Whatever happened to building a meaningful partnership between the private sector and the National Park Service? Many Superintendents, pressed with all the daily pressures of managing the park, have said that one of the strongest alliances for accomplishment of their goals was the partnership with their concessioner. Many things have been done by the private sector concessioners that Superintendents could not otherwise have accomplished working alone. The partnership has worked best when there has been consultation which has built trust and responsibility to accomplish the common goal of park management and service to the visitors.

In recent years there has been serious erosion in this partnership theory. Congress must weigh carefully whether it desires to divorce this relationship after many years of success or whether it more wisely could encourage it and work to strengthen it as it continues to be a strong element of success in our National Parks.

Robert Redford Testimony
On The Issue Of The
YOSEMITE NATIONAL PARK CONCESSIONAIRE

U.S. House of Representatives Natural Resources
Committee Hearing - March 24, 1993

On January 29, 1992 I joined hundreds of concerned citizens in testifying at the Yosemite Concession Services Plan Public Meeting held in Los Angeles. As I mentioned that evening, Yosemite is close to my heart. I worked there, learned to climb there, and through the years I've enjoyed its immense beauty and splendor. But, the Park is not the same Park it was 40 years ago.

Through my involvement in creating the documentary, Yosemite: The Fate of Heaven, my worst fears were confirmed several years ago as I saw the sheer magnitude of the problems and challenges currently facing the Park. It only furthered my resolve and commitment to the preservation of this magnificent natural wonder.

Ultimately, more than 250 people testified at four public hearings on the Yosemite Concession Services Plan and an additional 4,000 others sent comments by mail. What emerged was significant public concern about the level of commercial activity in the Yosemite Valley, the failure to comply with the goals set forth in the 1980 General Management Plan, and the loss of the tent cabins which would limit access for those with lower incomes. Unfortunately, many of these concerns did not find their way into the final Concession Services Plan.

Yosemite bids were due on November 16, 1992. The Park Service opened them on November 30. Two short weeks later, in the waning days of the Bush Administration, the next concessionaire was chosen to be in charge of a \$2 billion contract over the next 15 years. In two short weeks, Delaware North, a concessionaire in race tracks and the Boston Garden, was chosen to manage the concessions for the crown jewel of the national parks.

I have not seen all bids and plans submitted to the Park Service, but my criticism of the process persists nonetheless. Why were the concerns of thousands of citizens ignored in the final plan? How could such a monumental decision be made in just two weeks? How carefully could plans and bids have been analyzed in 14 days?

My differences with the Bush Administration on environmental policy were considerable and I spoke of them publicly. For me, the fact that this monumental decision was made so quickly by an Administration which had just been voted out of power, is something which should be questioned. It's not a decision which should be allowed to be slipped under the door on your way out of office. It's far too important.

Redford-pg.2

The management of our national parks and the awarding of concession contracts requires a new outlook and the setting of new environmental standards. I believe the current Administration should make the decision and that they, too, should be charged with taking adequate time to carefully analyze and consider such important and complicated matters. After all, the way Yosemite goes, is the way the Park Service will deal with the major contracts for our other National Parks.

The new Administration and The National Park Service have a responsibility to the American people to ensure that the next Yosemite concessionaire has a greater concern for a more natural visitor experience and to make the priority preserving the natural environment, rather than exploiting it. It's not clear that the concessionaire chosen for Yosemite has presented a plan to address either adequately.

I join with others testifying today in asking that all bids submitted be more adequately reviewed by a appropriate and balanced team of accountants, financial analysts and natural resources experts prior to submitting a choice of Yosemite concessionaire to Congress. I thank Reps. Miller and Vento for conducting this informational hearing.

Thank you.

(Written submission on March 24, 1993)

**TESTIMONY OF RANDOLPH C. READ
YOSEMITE PARK SERVICES, L.P.**

**Before the Subcommittee on
Oversight and Investigations**

**Before the Subcommittee on
National Parks, Forests, and Public Lands**

March 24, 1993

**Honorable George Miller
and
Honorable Bruce F. Vento
Chairmen**

Testimony of Randolph C. Read
Yosemite Park Services, L.P.

Before the Subcommittee on
Oversight and Investigations

Before the Subcommittee on
National Parks, Forests and Public Lands

March 24, 1993

Honorable George Miller
And
Honorable Bruce F. Vento
Chairmen

I. INTRODUCTORY SUMMARY

Yosemite Park Services, L.P., submitted the best overall offer to the National Park Service for the concession contract at Yosemite National Park. By misreading and misunderstanding the Yosemite Park Services proposal, the National Park Service incorrectly found it "unsatisfactory," despite the fact that, at worst, the proposal was ambiguous, and the National Park Service easily could, and should, have clarified its misreading of the proposal. The National Park Service mistakenly found the funding commitment letters submitted with Yosemite Park Services's proposal to be ambiguous, and thus concluded that the proposal was "unsatisfactory." This finding is in fact based on a complete misunderstanding of the Yosemite Park Services proposal, and could have been corrected by a telephone call, just like the telephone call the National Park Service placed to Delaware North Companies, Inc. (Delaware North), but not to Yosemite Park Services. The failure to at least make a telephone call to Yosemite Park Services for clarification purposes, when just such a telephone call was placed to Delaware North, was a violation of National Park Service procurement regulations.

Yosemite Park Services is the only offeror that proposed both: (1) no limitation on acceptance of environmental liabilities, and (2) a Capital Improvement Fund (CIF) contribution that under all circumstances equals or exceeds the National Park Services' requirements. Delaware North's offer did not propose a CIF as high as Yosemite Park Services,' and Delaware North's proposed CIF contribution does not satisfy the National Park Services' requirement that the CIF contribution be at least five percent. Therefore, on its face, the Delaware North proposal should have been rated "unsatisfactory."

Yosemite Park Services can only conclude that the National Park Service selection process was flawed. The National Park Service's Evaluation Panel conducted a hurried evaluation, making a selection decision in only ten days. This unreasonably short evaluation period resulted in incomplete analysis of the six competing proposals, and in careless errors. Thereafter, the Selection Panel merely accepted these flawed evaluations, and failed to conduct the required overall, comparative assessment of the competing proposals. As a result, the Secretary of Interior was not presented with a reasoned choice among competing offerors, as all offerors other than Delaware North were eliminated, and Delaware North was selected by default.

The National Park Service breached the legal requirement in its own procurement regulations to seek clarifications from all competing offerors. The National Park Service breached its announced source selection plan by choosing Delaware North by default, rather than through an assessment of the relative merits of the competing proposals.

Yosemite Park Services has requested the Secretary of Interior to review the evaluation of its competing proposal and the entire process centering around this flawed procurement.

II. BACKGROUND

After the purchase of MCA by Matsushita in 1990, the National Park Service and MCA reached an agreement whereby it was agreed that the existing concessionaire, Yosemite Park and Curry Company, would not compete for the renewal of the Yosemite concession contract. The National Park Service was thus presented with the opportunity to establish a more favorable contract with a new concessionaire.

In early 1992, the National Park Service issued its "prospectus" for Phase I of the competition. It received numerous inquiries and a number of proposals. A review was conducted, and the National Park Service decided that twelve offerors, including Yosemite Park Services, were qualified to submit proposals in Phase II. The National Park Service issued the Phase II prospectus on July 15, 1992. Yosemite Park Services was one of six offerors who submitted proposals in Phase II.^{1/}

The proposals were reviewed by two separate panels: an Evaluation Panel and a Selection Panel. The Evaluation Panel commenced its review of the six Phase II proposals on December 1, purportedly analyzed each, prepared written reports on each of the six proposals, and concluded its functions on December 10, 1992. Over the following seven days, the Selection Panel reviewed the findings of the Evaluation Panel, supposedly conducted its own objective, overall analysis of all six proposals, prepared a memorandum and issued this memorandum and a selection decision on December 17, 1992.^{2/}

^{1/} See the December 17, 1992, Memorandum of the Yosemite Concessions Selection Panel (Selection Memorandum), page 1.

^{2/} See Selection Memorandum.

The Selection Panel found one of the six Phase II proposals to be unresponsive, and decided that four of the remaining five Phase II proposals were "unsatisfactory" in one or more respects as measured against the announced Phase II Evaluation Criteria.^{3/} Despite the announcement, in the Phase II Prospectus, that selection of the "best proposal" would be determined by assessing the relative merits of competing Phase II proposals against the announced Evaluation Criteria, in truth the Selection Panel employed a process of elimination and chose by default the only remaining Phase II proposal, submitted by Delaware North, as the "best overall offer."^{4/}

III. YOSEMITE PARK SERVICES SUBMITTED THE BEST OVERALL OFFER AND SHOULD RECEIVE THE AWARD

If an objective, comparative review is conducted of these offers, it will be determined that the best overall offer was submitted by Yosemite Park Services.^{3/} Insofar as the key elements and requirements of the National Park Service are concerned, the following represents such an objective comparative analysis:

A. Environmental Liabilities

Future environmental remediation and other such costs are known to be substantial. They are currently projected at between \$800,000 and \$900,000 per year, and offerors were told to assume a total of not less than \$12.5 million over the 15 years of this contract. It should also be assumed that such costs may in fact substantially exceed that current target. Limitations, or "caps," by the concessionaire on such environmental liabilities, therefore, will in-

^{3/} The Evaluation Criteria are submitted herewith as Exhibit 1.

^{4/} Selection Memorandum, pages 7-8.

^{5/} Exhibit 2 submitted with this testimony presents the results of just such a review.

inevitably increase the costs, and thus decrease the returns, to the National Park Service—and the taxpayer.

Only Yosemite Park Services and Delaware North offered to accept responsibility for environmental liabilities without restrictions. All other offerors put limits on such environmental liabilities and, because of the crucial importance of this requirement, were properly disqualified by the National Park Service.

B. Capital Improvement Fund

Delaware North proposed an alternative contribution to the CIF of either 4.5 percent or 5 percent and, therefore, Delaware North's proposal does not satisfy the requirement that the CIF contribution be at least 5 percent. Phase II, Criterion 16, specifically provides, in paragraph 4, as follows:

While APPLICANTS are free to make whatever proposals they may feel appropriate, the Service, in its internal analysis, has determined that a CIF proposal of less than five percent (5%) is likely to be considered insufficient.

The Delaware North CIF contribution, on its face, fails to satisfy this minimum 5 percent and, therefore, should have been rated "unsatisfactory." Further, it has now been generally conceded by the National Park Service that Delaware North's alternative CIF contribution of 4.5 percent, rather than the 5 percent CIF contribution used for evaluation purposes, will apply.

As contrasted with the CIF contribution proposed by Delaware North, the Yosemite Park Services contribution percentage commences at the required 5 percent level and, depending on certain factors, could range upward substantially beyond that. Except for the proposal of TW Recreational Services (which was disqualified on several other grounds), Yosemite Park Serv-

ices was the only one of all the offerors to propose a CIF contribution which always meets or exceeds the minimum required percentage.

The Selection Panel used figures of 4.7 percent and 5.2 percent for Delaware North alternative CIF contributions, apparently as a "present value equivalency" for the 4.5 percent and 5.0 percent CIF alternatives actually offered. This ".2 percent" was *not* applied, as it should have been, to the Yosemite Park Services proposal of a minimum 5 percent CIF. This resulted in additional millions of dollars in the present value number for Delaware North not also credited to Yosemite Park Services, but should have been.^{4/}

The National Park Service committed an even more serious error in evaluating the Yosemite Park Services CIF contribution as if it were a steady 5 percent. In fact, Yosemite Park Services' proposal would actually produce CIF contributions substantially above this number.

These errors also illustrate the fact that the Selection Panel did not really study the Yosemite Park Services proposal nor perform a fair, *comparative* analysis. If there is a comprehensive review and genuine comparison of these various proposals, the Department of Interior will find that Yosemite Park Services offers a higher range CIF contribution than *any other offeror* and, therefore, is significantly ahead of all other offerors in this most important aspect of the procurement. Yosemite Park Services thus best satisfies the point made by the Congress with respect to increasing the taxpayers' share of the profits earned in National Park Service concessions.

^{4/} Selection Memorandum, pages 5-6.

AS TO THE TWO KEY REQUIREMENTS OF ENVIRONMENTAL LIABILITIES AND CIF CONTRIBUTIONS, THEREFORE, YOSEMITE PARK SERVICES WAS THE ONLY SATISFACTORY OFFEROR.

C. Environmental and National Park Considerations

Yosemite Park Services has established outstanding credentials for environmental sensitivity through the individual members who will participate in these operations and through the inclusion of the Sierra Club, or a similar environmental group, on its board and in its operations.

Moreover, Yosemite Park Services has proposed to donate a portion of any profits from the Yosemite Concession to a trust managed by the Sierra Club and the Read Foundation. These funds will be used throughout the National Park Service system. Yosemite Park Services has also proposed, at its expense, to create and operate, in the Park, a Yosemite Fine Arts Center for educational, cultural, and historical programs.

This involvement of the Sierra Club and other park-supportive activities proposed by Yosemite Park Services was specifically acknowledged by the National Park Service as "expressing an excellent understanding of their mission relative to park resources and visitor needs and clearly recognizing their role as an adjunct to the park experience."

Yosemite Park Services believes that the Department of Interior will find that no other offeror matches Yosemite Park Services's credentials and specific commitments to support and enhance the mission of the National Park Service and the natural resources it administers. The only exception might be YRT, but YRT's proposal (as described below) was disqualified on two important criteria and found highly questionable in other significant respects.

YOSEMITE PARK SERVICES, THEREFORE, IS THE ONLY OFFEROR TO MEET ALL THREE OF THE ABOVE-STATED KEY REQUIREMENTS.

D. Pre-Existing MCA Financing

While Yosemite Park Services fully accepted the financial responsibilities of the existing MCA debt (some offerors declined), Yosemite Park Services also has developed a unique proposal to replace this debt at a lower interest rate. This not only accords with the National Park Service's expressed preference for alternate financing (due to the complicated security arrangements of the MCA debt), but it also shows the strong financial management credentials and creativity of the Yosemite Park Services partners.

E. Comparison and Summary

One of the six offerors in Phase II, California Natural Resource Management, Inc., was deemed unresponsive (among other deficiencies, it proposed a fee structure under which it would charge the Park 3 percent of revenues).²⁷

Of the remaining five offerors, Delaware North should have been rated unsatisfactory with respect to the CIF contribution since it proposed a range of percentages which admittedly would dip below the 5 percent requirement and, at best, would barely achieve that minimum (see, above). A vastly greater return to the taxpayers is offered by Yosemite Park Services, whose CIF contribution percentage begins at the maximum Delaware North contribution and extends upward dramatically.

TW Recreational Services was properly disqualified on several grounds. For example, it refused to fully accept the environmental liabilities, and failed to commit to assuming the existing MCA debt. The National Park Service also noted that because of a recent leveraged buy-out, certain debt covenants might well restrict the ability of TW Recreational Services to make

²⁷ Selection Memorandum, page 4.

the required \$12 million capital contribution. Overall, the National Park Service found that the TW Recreational Service proposal "constitutes material changes to the contract for the benefit of the offeror" and "could not be accepted . . . without resolicitation of the proposal."^{9/}

YRT was deemed unacceptable in two categories. It limited its environmental liabilities and did not meet the financial capability criteria. Specifically, YRT had raised only \$7 million of the required \$12 million initial working capital. Yosemite Park Services, on the other hand, has not only raised the full \$12 million in initial working capital but, moreover, specifically represents that its financial partners have resources over a billion dollars and are fully ready and able to advance substantially more equity as necessary or appropriate.^{10/}

YRT was also deficient with respect to the CIF contribution. Specifically, the YRT CIF contribution was only 2 percent in the first four years. It ranged up to 6.1 percent after that, but only after certain profit participation issues were met. Since the profit participation matters are unknown at this point, it is not clear exactly what the CIF contribution would be from YRT.^{11/}

The remaining offeror, Amfac, was disqualified because it had so conditioned its environmental liabilities that an award "would require a resolicitation" of the proposed contract. Moreover, the National Park Service questioned the stability of the Amfac financial position and

^{9/} Selection Memorandum, pages 5-6.

^{10/} Yosemite Park Services Application, page 20 of 24.

^{11/} Selection Memorandum, pages 6-7.

noted that it was the offeror that had proposed the lowest CIF contribution (a range of 1.9 percent to 3.1 percent). Amfac should have been deemed unsatisfactory in that area as well.^{11/}

BY OBJECTIVE, COMPARATIVE ANALYSIS, THEREFORE, IT IS CLEAR THAT YOSEMITE PARK SERVICES SUBMITTED THE "BEST OVERALL OFFER."

IV. YOSEMITE PARK SERVICES WAS TREATED WRONGFULLY AND UNFAIRLY, AND THE DEPARTMENT OF INTERIOR WAS THUS DEPRIVED OF A REAL CHOICE

A. The Unsatisfactory Finding Should be Reversed

As described above, Yosemite Park Services was found "unsatisfactory" with respect to only one of the evaluation criteria: that it failed to submit a sufficiently firm financial commitment of \$12 million in equity for working capital. The Selection Panel concluded, therefore, that an award to Yosemite Park Services would merely "give YPS an option on the contract."^{12/}

1. The Selection Panel Misunderstood the Yosemite Park Services Offer

This "unsatisfactory" rating was based upon a total misunderstanding of the Yosemite Park Services proposal. In its formal transmittal letter dated November 16, 1992, Yosemite Park Services used the language prescribed by the Park Service in unequivocally stating its firm commitment to fund the \$12 million in equity as working capital:

We also agree to provide the National Park Service within thirty days of the presentation of the final Concession Contract binding commitments for the financing proposed by our offer and agree

^{11/} Selection Memorandum, pages 4-5.

^{12/} See Criterion 15, Exhibit 1, page 6.

to make the required \$12 million initial capital investment in the NEW CONCESSIONER as of its formation.^{13/}

Moreover, the proposal contained supporting documentation in the form of financial statements and a projected balance sheet expressly showing the \$12 million in equity as working capital, thus further establishing this firm commitment and satisfaction of Criterion 15. Specifically, the Yosemite Park Services "STATEMENT OF FINANCIAL POSITION" as of November 16, 1992, shows,

Assets

Limited partnership subscription receivables	\$12,000,000 ^{14/}
----------------------------------------------	-----------------------------

And the Pro Forma Balance Sheet for the proposed operating company states,

Assets

Cash	\$12,000,000 ^{15/}
------	-----------------------------

This clear statement of commitment was also repeated in the Yosemite Park Services proposal, Part V, "Financial Operations and Financing," at Paragraph 5, "Equity Contribution."^{16/}

The Selection Panel ignored these portions of the Yosemite Park Services proposal and seized, instead, upon the following sentence in the November 12, 1992, supporting letter from one of the limited partners: "This commitment to fund is subject to the approval by the National Park Service and [the limited partner], at their sole discretion, of the Concession Contract and

^{13/} Yosemite Park Services Application, page 7 of 26.

^{14/} Yosemite Park Services Application, page 10/4 of 7.

^{15/} Yosemite Park Services Application, page 10/6 of 7.

^{16/} Yosemite Park Services Application, page 22/3 of 10.

any other required documentation and agreements.^{17/} The Selection Panel saw this as conflicting with the firm commitments stated elsewhere in the proposal.

In reality, this statement in the commitment letter merely reflects the fact that following the evaluation and designation of an awardee, the National Park Service would negotiate a final version of the proposed concession contract with the designated awardee. This is also specifically recognized in the National Park Service press release of December 17, 1992, which concludes with the statement that "final contract implementation still needs to be worked out"^{18/}

The statement in the commitment letter, therefore, was wholly in accord with this procedural aspect of the procurement. It did not and was not intended to reserve merely an "option" for Yosemite Park Services and should not have been so construed. To the extent the Selection Panel saw an ambiguity between this statement in the letter and the other firm commitments in the Yosemite Park Services proposal, it should have sought clarification from Yosemite Park Services.

2. The Selection Panel Should Have Sought
Clarification of an Apparent Ambiguity
as to the Yosemite Park Services Commitment

If the commitment letter was understood by the National Park Service to conflict with the firm commitments elsewhere in the proposal, and assuming a legitimate question or doubt was presented about whether Yosemite Park Services was firmly committing to the \$12 million in equity funding, the Selection Panel, at the very least, should have sought clarification. Indeed,

^{17/} Yosemite Park Services Application, page 22/8 of 10.

^{18/} Selection Memorandum, page 11.

the "APPLICATION" section of the Phase II Prospectus expressly provides that in the "Evaluation of Proposals" the Park Service "may verify information and clarify points as it feels necessary." Moreover, Yosemite Park Services made the following express representation in its proposal in case of any lack of information or misunderstanding by the Park Service:

YPS is willing to provide the National Park Service with any additional verification or support it might request to substantiate the availability of this commitment of \$12,000,000. If further such substantiation is requested, YPS will respond to such request promptly.^{19/}

The severity of this error by the Selection Panel in failing to seek clarification is greatly magnified by the fact that, in the case of Delaware North, it did place a telephone call and received clarification; i.e., as to the proposed Delaware North CIF contribution. The failure to make a similar phone call to clarify the Yosemite Park Services proposal not only shows poor procurement management but, more importantly, constitutes a violation of the National Park Service's own regulations. Specifically, NPS-48 provides, in pertinent part:

F. CLARIFICATION OF PROPOSAL DETAILS

If one offeror is given the opportunity to submit additional information, all others should also be allowed to do so.

(Emphasis added).

If the Selection Panel had sought clarification from Yosemite Park Services, all doubt would have been removed as to the \$12 million funding commitment, and there would have been no basis for the unsatisfactory rating.

This failure to clarify with respect to Yosemite Park Services also reflects the fact that the Selection Panel did not truly conduct a thorough, comparative review of all the responsive pro-

^{19/} Yosemite Park Services Application, page 22/4 of 10.

posals. Instead, it had narrowed the choice down to Delaware North and that is apparently why only Delaware North received a clarification telephone call. This serious flaw in the procurement process may easily be rectified, even at this point. Since the proposals are still under review, the Secretary should demand that the National Park Service undertake such clarifications as to Yosemite Park Services and other offerors as may be appropriate and necessary. If such communications are kept to purely "clarifications," and not "discussions," an entirely new round of best and final offers, will not be required. Clarifications could be accomplished quickly, and is required by the National Park Services' own procurement regulations.

3. Since Yosemite Park Services' Phase I Representation Was Satisfactory, the Same Representation Also Should Have Been Satisfactory in Phase II

A primary ground for finding a Phase I proposal satisfactory, and the offeror qualified to submit a further proposal in Phase II, was a finding that the proposal had adequately committed to provide the \$12 million initial equity capital.^{20/} The representations in the Phase I proposal by Yosemite Park Services, therefore, were deemed by the National Park Service to be a sufficient, firm, and detailed commitment of the \$12 million.^{21/} The representations in the Yosemite Park Services Phase II proposal were substantially the same, if not stronger. Thus given that Yosemite Park Services had specifically identified in Phase I the sources of its equity funding, the approval by the National Park Service of Yosemite Park Services' Phase I proposal

^{20/} Selection Memorandum, page 2.

^{21/} This clear commitment by Yosemite Park Services in both Phase I and Phase II is in sharp contrast with the YRT proposal, which advised that it had raised only \$7 million of the required \$12 million. See Selection Memorandum, page 7.

should be deemed satisfactory for Phase II, as no further fund placement activities were required thereafter.

4. The National Park Service Specifically
Confirmed Point "3." Above

Yosemite Park Services sought and received specific confirmation from the National Park Service official designated as the official contact, that the Phase II proposal would be satisfactory if it was substantially the same as the Phase I proposal. Specifically, in early November 1992, Randolph C. Read, President of Yosemite Park Services's general partner, made a telephone call to Martin Nielson of the National Park Service to ask what was required to complete the financial capability requirement in Phase II.^{22/} Mr. Nielson did not provide any specific clarification of the requirements. Mr. Read, therefore, told Mr. Nielson that Yosemite Park Services intended to make similar representations and to submit the same type of supporting letters as had been satisfactory in Phase I. Mr. Read was told by Mr. Nielson that this would suffice: "That sounds fine."

5. The National Park Service Should Have Given
Clear Notice of Different Phase II Standards

If the standards were changed for Phase II (i.e., different, higher standards were to be applied), the National Park Service, at least, should have brought that clearly to the attention of Yosemite Park Services (and other offerors). No such notice was given.

^{22/} The cover page of the Prospectus designated Mr. Nielson as the official Park Service representative for telephone inquiries.

6. The National Park Service Could Have Required A Specific Form Of Commitment Letter. But Elected Not To Do So

If the form of the commitment letter the National Park Service desired was of such paramount importance, it could have easily conveyed this requirement to the offerors in the Prospectus by requiring that a specific form of commitment letter be included with each competitive proposal. In fact, the National Park Service did just this very thing for the transmittal letter required of all offerors.

The National Park Service thus erred in at least six respects in rating Yosemite Park Services unsatisfactory as to the \$12 million commitment.

B. The Procurement Process Was Systemically Flawed

1. The Evaluation Period Was Unreasonably Short

The six proposals reviewed by the Selection Panel numbered many thousands of pages covering the extensive, detailed and complex requirements of the National Park Service Prospectus. Yet the Evaluation Panel completed its review and analysis and came up with a recommendation in only the ten days (including Saturday and Sunday) from December 1 through December 10, 1992. Thereafter, the Selection Panel supposedly studied the findings of the Evaluation Panel, conducted its own analysis of all six proposals, reached a recommendation and prepared and issued its final memorandum within seven days. Manifestly, these were woefully inadequate periods in which to perform these functions responsibly; particularly if the criteria being applied were new and different from those employed in Phase I. The misunderstanding as to the Yosemite Park Services financial commitment, and the failure to clarify what should have been, at worst, an apparent ambiguity, starkly illustrate this deficiency in the procurement process.

Another serious error occurred in this connection in that the 5 percent CIF contribution by Delaware North was apparently assigned a present value equivalency of 5.2 percent. If such an equivalency was assigned to Delaware North's offer, it obviously also should have been assigned to Yosemite Park Services' offer. The failure to do so led to approximately \$2.2 million dollars in the present value worth unfairly assigned to only Delaware North's proposal. This magnitude of error would have been even greater had Yosemite Park Services' proposal been valued properly at the higher amounts actually submitted.

2. The Park Service Should Not Have Made Its
Selection Decision By The Process Of Elimination

This contract is not only of enormous financial magnitude but also concerns a most important natural resource of the United States. As demonstrated by the statements of Senator Bumpers and then Secretary-Designate Babbitt, during the nomination hearing on January 19, 1993, this concession contract involves a crucial issue of national policy:

[President-Elect Clinton] said we are not going to do business the way we have been doing it. And I intend to support him with all my might in the changes that I think make sense. And you could not find a better place to start unless it was in reforming the concessions policy in our national parks. Now these are all issues that really warm the cockles of the hearts of Senators from western States. We have a few concessions in our State, too. But you perhaps know that in 1991 over \$500 million was taken in by national park concessionaires from which the United States got the princely sum of \$13 million in return.

Secretary-Designate Babbitt responded as follows:

Senator, if I might reply briefly on the park issue. I believe that the park concession issue has important ramifications, not only in terms of economics, but in terms of the role of concessionaires in

Given these factors of manifest importance, the Selection Panel should not have selected the "best proposal" through a process of elimination. This procurement should not have been conducted like a sealed bid solicitation for some routine Government purchase. Instead, the Selection Panel should have conducted a true comprehensive assessment of the relative merits of the Phase II offers. Clarifications with offerors other than just Delaware North would have resolved ambiguities and avoided the many mistakes and misunderstandings in this procurement; and thus greatly enhanced the competitively-driven financial benefits to the National Park Service and the taxpayers.

Thank you for the opportunity to present this testimony.

Respectfully submitted,
Yosemite Park Services, L.P.
By Randolph C. Read

March 24, 1993

Name of Offeror _____

PART I

IDENTIFYING INFORMATION

CRITERION 1. THE APPLICANT HAS CLEARLY IDENTIFIED THE ENTITY(S) MAKING THIS PROPOSAL, THE ENTITY(S) THAT CONTROL THE APPLICANT, AND THE ENTITY(S) TO BE INVOLVED IN OPERATING THE BUSINESS AND HAS PROVIDED THE SUPPORTING MATERIALS CALLED FOR.

"ENTITY" is the Corporation, Partnership, Sole Proprietorship or other management structure(s) that participate in the ownership or control of this business. The term includes each individual layer from the actual, in-park operating entity to and including the individual(s) who exercise a controlling interest as that term is defined at 36 CFR 51.

"APPLICANT" is the ENTITY making the proposal in the APPLICATION

"CONCESSIONER" or "NEW CONCESSIONER" is the ENTITY that will sign the CONTRACT with the Secretary. This will be the corporation which survives the acquisition by merger of the Yosemite Park and Curry Company.

"OPERATOR" is the CONCESSIONER as it may be known to the public, a dba.

Use the format and instructions that follow, identify each ENTITY, the APPLICANT, the CONCESSIONER, and the OPERATOR. Add information as necessary to make things absolutely clear. Make clear what the formal structure of each is and who will own it. Provide materials to explain the financial circumstances, legal form, and ownership of each. Be sure to identify the Corporation that will acquire the Yosemite Park and Curry Company pursuant to the Merger Agreement.

Where there are layers, subordinate or superior ENTITIES, significant contractors, or other organizations or individuals that will act in concert to provide the services required or that will have a role in managing, directing, operating, or otherwise carrying out the service to be provided, describe each of them on a form and explain the relationships between them.

Do any of the above have operations or interest in other operations in the vicinity of Yosemite National Park?

☐ YES ☐ NO

If Yes, Please Identify:

*** YOSEMITE NATIONAL PARK ***
**** NATIONAL PARK SERVICE - WESTERN REGION ****

Name of Offeror _____

APPLICANT, ENTITY, NEW CONCESSIONER, OPERATOR IDENTIFICATION FORM

A. Name: _____

B. Present Address: _____

C. Contact Person: _____

D. Present Telephone: _____

E. FAX Number: _____

F. Form of business:

☐ Corporation
(Explain)☐ Partnership☐ Individual
(Sole Proprietor)☐ Other

G. Describe the expected role in providing this concession service:

H. Structure:

I. Ownership:

Names and Addresses of Owners (Corp: Show Controlling Interest; Close Corp: Show All)	Number and Type of Shares or Percentage of Ownership	Total Capital Investment (\$)
_____	_____	_____
_____	_____	_____
_____	_____	_____

TOTALS FOR ENTITY: _____

TOTAL SHARES ISSUED: _____

APPLICATION
YOSEMITE HOTEL
AND OTHER SERVICES
PAGE 10 OF 26

Name of Offeror _____

I. If a corporation, list the names, addresses, and titles of corporate officers and the names and affiliations of the members of the Board of Directors:

Name	Address	Title
_____	_____	_____
_____	_____	_____
_____	_____	_____

State of Incorporation: _____

The following attachments must be provided as applicable for each subject of the form:

1. For a Corporate APPLICANT and CONCESSIONER: Articles of Incorporation and By-Laws.

2. For APPLICANTS and CONCESSIONER who are Partnerships: Partnership Agreements or Joint Venture Agreements.

3. For contracts or in effect or proposed: Copies of those agreements or contracts.

If the above materials are not yet available, provide draft documents or state when they will be available and give a brief summary of the anticipated important provisions.

4. For APPLICANTS and CONCESSIONER provide the latest financial statement for themselves and their parent company (if any) including the notes to the statements or similar explanatory material and the related audit report.

5. For corporations, partnerships or others that are APPLICANTS or that propose to provide the services or part of the services required: Provide the latest financial statement available including the notes to the statement or similar explanatory material and the related audit report.

6. Sole proprietors and unconventional lenders and proposed individual investors: Provide Personal Financial Statements.

*** YOSEMITE NATIONAL PARK ***
**** NATIONAL PARK SERVICE - WESTERN REGION ****

Name of Offeror _____

PART II

EXPERIENCE AND RELATED BACKGROUND

CRITERION 2. THE COMPETENCE OF THE ENTITY, AS REFLECTED IN THE APPLICATION, TO MANAGE THIS BUSINESS ACTIVITY EFFECTIVELY.

CRITERION 3. THE COMPETENCE OF THE PRINCIPAL AND OTHER STAFF, AS REFLECTED IN THE APPLICATION, TO OPERATE HOTEL, MOTEL, CABIN, RESTAURANT, CAFETERIA, TOUR and INTERPRETATION, FAST FOOD, SNACK BAR, MERCHANDISE, GROCERY MARKET, GIFT SHOP, SERVICE STATION, TRANSPORTATION, SKIING, PUBLIC SHOWERS, LAUNDRY and RELATED FACILITIES and SERVICES.

Describe the business qualifications and experience of the ENTITY and the CONCESSIONER to manage this business.

Using the format on the following page:

1. Provide detailed resumes for all current and proposed partners, sole proprietors, key employees including proposed on-site managers, and for owners of corporations and operating officers who will be actively involved in the management of this business.
2. Identify the specific role the individual is to play and establish their ability to play that role.

When discussing work experience, be specific with respect to size of operation, dates, area of operation, specific duties, number of people supervised, hours worked per week, and other factors that would be helpful to reviewers in establishing a clear understanding. Do not omit training and education and do not omit special qualifications, ratings, or licenses that are needed in some special occupations.

APPLICATION
YOSEMITE HOTEL
AND OTHER SERVICES
PAGE 12 OF 26

Name of Offeror _____

EXPERIENCE AND RELATED BACKGROUND OF SENIOR STAFF AND KEY PEOPLE

NAME _____

Name and Address of Employer or Business	Tele. No. (+ Area Code)
	Nature of Business:
	Exact Title of Position (Indicate self-employed)
Dates of Employment From: _____ To: _____	No. of People Employed or Supervised
Education, Degrees, and Special Skills	

Description of Duties and Responsibilities

ROLE IN PROPOSED BUSINESS

Estimated Hours per Week:

QUALIFICATIONS FOR THAT ROLE:

*** YOSEMITE NATIONAL PARK ***
**** NATIONAL PARK SERVICE - WESTERN REGION ****

Name of Offeror _____

PART III

PLANS FOR OPERATION

CRITERION 4. THE EXTENT TO WHICH THE BUSINESS STRUCTURE PROPOSED IS SUFFICIENTLY STAFFED AND IS APPROPRIATELY STRUCTURED TO DELIVER THE SERVICES REQUIRED IN A QUALITY MANNER.

CRITERION 5. THE EXTENT TO WHICH EMPLOYEE POLICIES ARE WELL-PLANNED AND WILL PROVIDE QUALITY EMPLOYEES.

CRITERION 6. THE EXTENT TO WHICH THE MAINTENANCE ACTIVITIES PROPOSED ARE SYSTEMATIC AND REFLECT A GOAL OF SUSTAINED HIGH QUALITY FACILITIES. THE APPLICANT ACCEPTS THE PROPOSED MAINTENANCE PLAN. AN ELEMENT OF A BETTER OFFER WILL REDUCE NPS RESPONSIBILITY OR COSTS UNDER THE PROPOSED PLAN.

CRITERION 7. THE EXTENT TO WHICH THE OPERATIONS PROPOSED MEET THE SERVICES OBJECTIVES AND REFLECT A GOAL OF SUSTAINED HIGH QUALITY FACILITIES AND SERVICES THAT ARE THE BEST OF THEIR TYPE. THE APPLICANT ACCEPTS THE PROPOSED OPERATING PLAN.

CRITERION 8. THE EXTENT TO WHICH SAFETY, SECURITY AND SANITATION ISSUES ARE IDENTIFIED AND SOLUTIONS PLANNED.

CRITERION 9. THE QUALITY OF THE APPLICANT'S PROPOSED EQUAL OPPORTUNITY PROGRAM.

CRITERION 10. LIABILITY AND PROPERTY INSURANCE MEETS OR EXCEEDS THE REQUIREMENTS OF THE NATIONAL PARK SERVICE INSURANCE PROGRAM.

CRITERION 11. IF THE MCA FINANCING IS ACCEPTED BY THE APPLICANT, THE PROPERTY AND LIABILITY INSURANCE MEETS OR EXCEEDS THE REQUIREMENTS OF THE MERGER AGREEMENT.

A. ORGANIZATION STRUCTURE - For the Proposed Concession

1. Provide an organizational chart showing the principal lines of authority between departments or functional areas and managers. Indicate the number of employees in each department or functional area and provide summary descriptions of the basic functions where those are not obvious by title. Make absolutely clear who the management decision makers will be. Where key employees are known, make sure that they were identified using the form in Part II of this APPLICATION. Provide proposed wage levels and estimated hours per week for each position or group of positions.

Name of Offeror _____

2. Explain your program for transition and the maintenance of continuity from the existing to the new concession operation.

B. EMPLOYEE POLICIES

1. The CONTRACT requires that the Concessioner establish pre-employment screening, hiring, training, recreation, housing, termination and other policies and procedures for the purpose of providing services to park visitors through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working and living environment for its employees.

The CONTRACT also requires that employees be hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner is asked to hire people of integrity who are both interested in serving the public in a national park environment and interested in being positive contributors to the park community. The Concessioner is required to conduct appropriate background reviews of applicants for employment to assure that they conform to the hiring policies established by the Concessioner.

Outline the program(s) that you propose that will meet these objectives. Please ensure that at least the items listed above are covered. Examples from other businesses you run could be useful in demonstrating your intentions and existing practices.

C. MAINTENANCE PLANNING

1. Describe your plans to provide proper maintenance of all equipment, rental equipment, furnishings, fixtures, buildings, and grounds.
2. Describe the approach you plan to take towards the care and security of the Reserved Property described at Exhibit "H" of the CONTRACT.
3. Will you accept the proposed Maintenance Plan? If you could make changes in it, what would you propose?

D. OPERATING SPECIFICATIONS

1. The services requested, generally as described herein, have been determined by the NPS to be sufficient for the park's needs. Operations are intended to be conducted in accordance with the Operating Plan included with the CONTRACT. Proposals of expansion, deletions, or other similar suggestions not in accordance with NPS planning documents including the

Name of Offeror _____

current versions of the Concession Services Plan and the Housing Plan, or of facilities of a type not requested will not be considered better proposals.

Please express any concerns or reservations you may have with these terms and conditions.

2. Will you accept the Operating Plan proposed? If you could make changes in it, what would you propose?

3. Considerable construction over the term of this CONTRACT will be required. How do you propose to approach the design and construction process?

4. Please review the discussion of the use of Brand Names and Logos in the Business Opportunity section of this SOR. Explain how you propose to approach this issue. Provide any information you can about your approach to design and the display of logos considering the discussion in the Business Opportunity section.

5. This business typically operates with many more customers than it has supply of facilities and services. Operations are somewhat monopolistic in nature. Prices could be higher than the NPS approves if pricing to the marginal customer were permitted. Facilities and services, being non-competitive, often can be less than the best of their type and still be used by customers. The Service would like to have park visitors have the best facilities and services of their type at what the visitor would feel is a reasonable price. Describe your internal quality control procedure to achieve these goals. Describe your ideas about working with the Service to achieve appropriate pricing. If you propose to reward staff based on performance, what kind of performance will be rewarded and what kind will not? How will the results of the Concession Annual Review Program be integrated into your employee appraisal and annual bonus program? (Please note the discussion of Rates and Services in the Business Opportunity section of this SOR)

E. SAFETY, SECURITY AND SANITATION

1. There is an existing Loss Control Plan for the company. Do you propose to follow it? If you propose changes in it, what would they be?

2. Describe the safety, security, and sanitation issues typical of this business. Describe your plans for managing these issues.

Name of Offeror _____

F. EQUAL OPPORTUNITY

1. Have you participated in a previous permit, contract, or sub-contract subject to the Equal Opportunity Clause contained in Executive Order No. 11246?

YES ____ NO ____

2. Have you filed all required Equal Opportunity reports (Standard Form 100, EEO-1), either under the requirements of Executive Orders or the Civil Rights Act of 1964?

YES ____ NO ____

3. The Service is interested in having its concession operations reflect, through its employees, the cultural and ethnic diversity of the area in which they operate and of the nation as a whole. Provisions of the draft CONTRACT at Section 3(b) address this goal. The Service is also interested in having similar participation in the management of the new concession by minority and women professionals. A minority participation program that advances these goals is desirable. The APPLICANT's plans in this regard are one of the selection criterion included in the application.

This business is to be conducted by one concessioner. It is not the policy of the National Park Service to have sub-concession operations. Joint ventures in which a selected APPLICANT is a principal are acceptable.

4. Describe how you would address Criterion 9.

G. INSURANCE

The proposed CONTRACT requires the concessioner to insure the buildings, structures, equipment, furnishings and betterments and merchandise used in the operation. Full replacement value coverage is the preferred insurance approach since it allows for the most assured replacement of services and facilities needed by the park to serve the visitor. Unless otherwise agreed to as provided in the NPS Insurance Program, replacement cost coverage is required for property, equipment and inventories used to provide the "services" in the proposed CONTRACT. The concessioner is also required to purchase and maintain commercial general liability insurance including Property Damage (minimum \$5,000,000), Builder's Risk coverage, Automobile Liability, Worker's Compensation, Liquor Legal Liability, Product Liability and other coverage as may be appropriate to particular authorized activities.

*** YOSEMITE NATIONAL PARK ***
**** NATIONAL PARK SERVICE - WESTERN REGION ****

APPLICATION
YOSEMITE HOTEL
AND OTHER SERVICES
PAGE 17 OF 26

Name of Offeror _____

1. Describe in detail the property coverage you propose.
2. Describe in detail the liability coverage you propose.
3. Describe in detail any other insurance you propose to carry.

*** YOSEMITE NATIONAL PARK ***
**** NATIONAL PARK SERVICE - WESTERN REGION ****

Name of Offeror _____

PART IV

JOINING THE NATIONAL PARK SERVICE MISSION

CRITERION 12. THE EXTENT TO WHICH THE ENTITY WILL, THROUGH ASPECTS OF IT'S OPERATION DESCRIBED BELOW, DIRECTLY CARRY OUT PROGRAMS WHICH PRESERVE, PROTECT AND INTERPRET THE RESOURCES OF YOSEMITE NATIONAL PARK.

CRITERION 13. THE EXTENT TO WHICH THE ENTITY REFLECTS AN UNDERSTANDING OF THE NATIONAL PARK SERVICE MISSION AND A CONCESSIONER'S ROLE IN CARRYING OUT THAT MISSION.

This Part is about operations within the park and under the terms of the CONTRACT. As discussed above, proposals that offer to provide benefits to the park or government that are outside of the terms of the CONTRACT will not be considered a better offer.

A. NEW APPROACH TO MERCHANDIZING

The Concession Services Plan calls for a substantial redirection of the gift and souvenir program. Describe your ideas and time table for carrying out this change. How will you develop store themes and decor as well as the necessary policies and sources of merchandise to successfully effect this change?

B. IMPROVING CONCESSIONER PROVIDED INTERPRETATION

It has been a problem in the past to achieve consistent quality in the interpretation done by the various tour guides, trip leaders, drivers, and others who deal with guests. Additionally, it has been a problem to achieve a consistent standard level of knowledge among all staff about the park and a consistent friendly and positive attitude by which guests are greeted. How would you go about setting standards and training to standard? See Operating Plan concerning Training and Interpretive Services.

C. CONDUCTING OPERATIONS WITH THE ENVIRONMENT IN MIND

Describe the Resource Protection (see Business Opportunity) posture and program that you will undertake. Who will be responsible? Who will carry it out? Make sure the organizational location is part of your organization

Name of Offeror _____

chart. Describe, at the least, how you will approach each of the following:

1. Solid waste disposal is a major environmental issue as well as a costly disposal problem. The new concessioner will be expected to reduce, reuse, and recycle. The new concessioner should actively work to reduce the amount of trash and waste generated, to acquire products with consideration given to the ability to reuse or recycle the product and its packaging, and to recycle all recyclable materials possible. A beverage container deposit program or some other approach that minimizes such trash and assures recycling is necessary.
2. Water and energy conservation must be practiced in daily operations and in the design and construction of both rehabilitated and new facilities.
3. The new concessioner will be expected to support the National Park Service Integrated Pest Management Program, which emphasizes preventive measures and allows use of chemicals and pesticides only as a last resort.
4. Underground tanks for building and vehicle fuels must meet all of the requirements of the United States Environmental Protection Administration and the State of California. A schedule of the tanks that are known to exist and their status is included in the Park Information and Statistics material provided.
5. Air quality affected by vehicle and other operations is of concern. Fuels are evolving as is engine technology in ways that will benefit air quality. Concession operations should adapt their operations to such changes as they are proven to be reliable and effective.
6. The operations are conducted in a natural area with a variety of wildlife. The new concessioner must conduct its operations under Park Service direction towards mitigating human-wildlife interactions.
7. Construction of all kinds should harmoniously integrate with the environment it is part of. Facilities that are cultural resources should be managed so as to maintain their intrinsic qualities through sustained conservation. Architectural style, design elements and construction materials should reflect the park and its history.

The overall objective is to conduct operations in a steadily evolving way oriented towards the use of efficient and cost effective approaches that

APPLICATION
YOSEMITE HOTEL
AND OTHER SERVICES
PAGE 20 OF 26

Name of Offeror _____

minimize negative impacts on our environment and to encourage others to do so too, for the same cost effective and self-protective reasons.

D. PHILOSOPHY ON OPERATING WITHIN NATIONAL PARK SERVICE AREA

Please provide us with your philosophy on operating within a National Park Service area.

E. ADDITIONAL INFORMATION

Please provide any additional information as to how you would meet the objectives of the above criteria.

- Private with
- 1st floor
- 2nd floor

Name of Offeror _____

PART V

FINANCIAL OPERATIONS AND FINANCING

CRITERION 14. THE EXTENT TO WHICH THE APPLICANT HAS A WELL-FOUNDED ESTIMATION OF THE LEVEL OF SALES AND EXPENSES THE BUSINESS WILL GENERATE, AND HAS MADE SOUNDLY BASED ESTIMATES SHOWING CASH FLOW AND RETURNS ON THE CAPITAL INVESTED.

CRITERION 15. THE EXTENT TO WHICH THE APPLICANT DEMONSTRATES ADVANTAGEOUS TERMS FOR FINANCING.

CRITERION 16. THE PROPOSAL MAKES THE COMMITMENT TO THE CAPITAL IMPROVEMENT FUND THAT THE NPS CONSIDERS WILL ADVANCE THE IMPLEMENTATION OF THE GOALS OF THE CONCESSION SERVICES PLAN AND THE HOUSING PLAN TO THE GREATEST EXTENT POSSIBLE WHILE BEING CONSISTENT, IN NPS JUDGEMENT, WITH A REASONABLE OPPORTUNITY FOR A PROFIT ON THE CAPITAL INVESTED AND FULFILLMENT OF OTHER OBLIGATIONS OF THE CONCESSIONER.

1. APPLICANTS must provide estimates of the revenues and expenses of the business in the form of pro forma income statements for each of the fifteen years of the contract period. Show annual cash flow. Use the formats on the following pages. Add to it but do not reduce the captions called for or change the order of items. For the purposes of this proforma, please do not give effect to changes in the nature or scope of operations as may be proposed by the Draft Concession Services Plan or by the Draft Housing Plan.

2. Provide also a departmental pro forma for fifteen years in the format provided. The assumptions on which the projections are based must be explained to a degree sufficient for reviewers to judge the validity of the estimates. Greater detail than less is preferred. Operating revenue and expenses must be broken down by month for all months up to the second year of stable operations.

For both paragraphs 1 and 2 use a 4% inflation rate. Make your own estimates of real growth but please provide assumptions.

3. Provide pro forma balance sheets as of the end of each income statement year provided.

Name of Offeror _____

4. What is the Capital Improvement Fund percent you propose? Express this fee as a percent of gross receipts. Show it by year and/or by levels of gross receipts. APPLICANTS should feel free to structure this in a way appropriate to their needs while also giving consideration to NPS goals for the CIF. While APPLICANTS are free to make whatever proposals they may feel appropriate, the Service, in its internal analysis, has determined that a CIF proposal of less than five percent (5%) is likely to be considered insufficient.

5. The APPLICANT will provide a minimum of \$12 million as initial equity for working capital. That amount is intended to include the amount reimburseable to NPF as described at page 9 of BUSINESS OPPORTUNITY, Purchase of Existing Assets and Business. This must appear on the books of the New Concessioner as equity, not debt. Make sure that these commitments are reflected in the financial information provided. Describe the source of and terms for these funds.

6. Identify the source of any financing needed. Document the availability of financing with financial statements, financing agreements and letters of intent from lenders. Present compelling evidence of proposers ability to obtain the necessary financing. Be specific. Identify all sources.

Describe the financial terms of each proposed financing source. Explain the financial arrangements you propose to use to finance any acquisition debt and to provide working capital.

If funds are to be raised from individuals, the APPLICANT must submit sufficient documentation to demonstrate, in a compelling way, the availability and commitment of such funds.

Funds from another source (i.e., parent company) must be supported by a recent balance sheet and income statement and whatever supporting documents are needed to demonstrate that funds are available and committed.

Funds raised by the sale of assets must be supported by a description and condition of the assets. Also, the condition of the market for such items should be indicated.

Describe how your financing arrangements taken as a whole, are advantageous terms for financing that balance the financial interests of the Service in this CONTRACT, the need for a soundly financed company with the least

APPLICATION
YOSEMITE HOTEL
AND OTHER SERVICES
PAGE 23 OF 26

Name of Offeror _____

number of financing issues to be negotiated in the future. Paying MCA cash at the closing, financing the purchase price through equity contributions and/or alternative financing arrangements, or an equity investment in excess of the \$12 million minimum requirement, could all be aspects of a better offer depending on their overall effect of the park's future.

APPLICANTS should note that, ideally, NPS would prefer to award the CONTRACT to an APPLICANT that does not choose to utilize the MCA financing arrangements due to the complex nature of the security agreement involved. Alternative financing arrangements will be considered as an element of a better offer in circumstances where the overall financing aspects of the proposal are viewed as advantageous to NPS taking into account the terms of the MCA financing package.

7. The APPLICANT selected by NPS to be awarded the CONTRACT may, subsequently, propose for NPS consideration modifications to its financing arrangements if they are at least as favorable to NPS as those presented in the offer. NPS, however, is not obligated to accept such modifications. Modifications in financial terms approved by NPS, including but not limited to modifications to the MCA financing arrangement, if applicable, will not be considered a material amendment to the terms and conditions of this SOR or the CONTRACT.

8. Please provide any additional information as to how you would meet the objectives of the above criteria.

*** YOSEMITE NATIONAL PARK ***
**** NATIONAL PARK SERVICE - WESTERN REGION ****

APPLICATION
YOSEMITE HOTEL
AND OTHER SERVICES
PAGE 24 OF 26

Name of Offeror _____

PROFORMA INCOME STATEMENT FORMAT
Annually for 15 Years

TOTAL GROSS RECEIPTS
COST OF SALES
GROSS PROFIT

DIRECT EXPENSE
Salaries
Other

TOTAL DIRECT EXPENSE

INDIRECT EXPENSE
Officers' Salaries
Other Salaries
Advertising & Marketing
Repair and Maintenance
Utilities
Other A&G
Other Indirect

TOTAL INDIRECT

FIXED EXPENSES
Management Fees
Insurance
Property Taxes
Interest
Other Fixed

TOTAL FIXED

CAPITAL IMPROVEMENT FUND
BUILDING IMPROVEMENT ACCOUNT
TOTAL FUND/ACCOUNT

OTHER INCOME
INC. BEFORE DEPRECIATION AND INCOME TAXES

DEPRECIATION
AMORTIZATION
INCOME TAXES

NET INCOME

*** YOSEMITE NATIONAL PARK ***
**** NATIONAL PARK SERVICE - WESTERN REGION ****

APPLICATION
YOSEMITE HOTEL
AND OTHER SERVICES
PAGE 25 OF 26

Name of Offeror _____

PROFORMA BALANCE SHEET FORMAT

CURRENT ASSETS

NET FIXED ASSETS

OTHER ASSETS

TOTAL ASSETS

CURRENT LIABILITIES

LONG TERM LIABILITIES

EQUITY

TOTAL LIAB. & EQUITY

*** YOSEMITE NATIONAL PARK ***
**** NATIONAL PARK SERVICE - WESTERN REGION ****

APPLICATION
YOSEMITE HOTEL
AND OTHER SERVICES
PAGE 26 OF 26

Name of Offeror _____

FORECAST BY DEPARTMENT

(Annual - 15 years)

GROSS RECEIPTS

Lodging
Food and Beverage
Souvenirs & General Merchandise
Other

COST OF SALES

Lodging
Food and Beverage
Souvenirs & General Merchandise
Other

DIRECT LABOR

Lodging
Food and Beverage
Souvenirs & General Merchandise
Other

OTHER DIRECT

Lodging
Food and Beverage
Souvenirs & General Merchandise
Other

*** YOSEMITE NATIONAL PARK ***
**** NATIONAL PARK SERVICE - WESTERN REGION ****

NOTES TO EXHIBIT 2

1. We understand that the Delaware North balance sheet indicates liabilities in excess of assets for a negative net worth which would seem to call in question the NPS conclusion that Delaware North met the financial criteria.
2. The NPS questions TW Services as to whether debt covenants in its recent leveraged buyout might restrict its ability to contribute capital.
3. The NPS questions the Amfac financial stability.
4. We treat the final negotiation of the concession contract as not significant.
5. We do not know the full significance of the conditions Delaware North placed on the contract.
6. We do not know what conditions these offerors may have placed on the assumption of the MCA obligations, or whether such conditions are significant.

MORRISON & FOERSTER

LOS ANGELES
SACRAMENTO
ORANGE COUNTY
PALO ALTO
WALNUT CREEK
SEATTLE

ATTORNEYS AT LAW
345 CALIFORNIA STREET
SAN FRANCISCO, CA 94104-2675
TELEPHONE (415) 677-7000
TELEFACSIMILE (415) 677-7522
TELEX 34-0154 MRSN FOERS SPO

NEW YORK
WASHINGTON, D.C.
DENVER
LONDON
BRUSSELS
HONG KONG
TOKYO

March 22, 1993

DIRECT DIAL NUMBER
(415) 677-6378

Ms. Joan Reiss
Regional Director
The Wilderness Society
116 New Montgomery, Suite 526
San Francisco, CA 94105

Re: Merger Agreement dated September 10,
1991 Between National Park
Foundation ("NPF"), Yosemite Park
and Curry Company ("YPCC") and MCA,
Inc. ("MCA") Related to Yosemite
Concession

Dear Joan:

It is my understanding that members of Congress who are reviewing the Yosemite concession contract have expressed concern that the above-referenced agreement (the "Agreement") will terminate if a final concession contract is not signed between a new concessioner and the National Park Service by September 30, 1993. At your request, I have reviewed the Agreement and related documents with respect to this concern.

The Agreement provides that, on or before September 29, 1993, NPF will form a new company ("Newco") that will be merged with YPCC. Upon the effective time of the merger, MCA's shares in YPCC would be converted into the right to receive \$49,500,000 plus interest (the "Merger Consideration").

As the transaction is currently contemplated, prior to the effective time of the merger, NPF will assign its rights and obligations under the Agreement to the new concessioner. The new concessioner, in turn, will establish Newco and, upon the merger of YPCC into Newco, will pay the Merger Consideration in cash or by means a note and deed of trust in accordance with the terms of the Agreement. However, the Agreement does not require that the new

MORRISON & FOERSTER

Joan Reiss
March 22, 1993
Page Two

concessioner be selected prior to the effective time of the merger. In fact, until the new concessioner is selected and NPF assigns its rights and obligations under the Agreement to the new concessioner, under the terms of the Agreement, NPF may on its own establish Newco and consummate the merger in accordance with its terms.

If a new concessioner is not in place before September 29, 1992, and, as a result, NPF chooses not to complete the merger, the provisions of Article VII related to termination and extension apply. The Agreement permits termination in three circumstances, two of which are presently applicable: (1) by mutual written consent of NPF, MCA and YPCC; (2) by NPF or MCA if the closing has not occurred by September 29, 1993, by virtue of the failure of the conditions contained in Article V of the Agreement. One of the conditions to MCA's obligations under the Agreement is the consummation by NPF of the merger. Consequently, the failure by NPF to satisfy its obligations under the Agreement, i.e., the merger, and therefore NPF's failure to satisfy MCA's conditions to closing, gives MCA the power to terminate the Agreement. It should be noted, however, that Section 7.04 of the Agreement provides that the parties may "extend the time for the performance of any of the obligations or other actions of the parties hereto."

In light of the foregoing, the fact that a new concessioner is not chosen by September 29, 1993 would not in itself terminate the Agreement. Rather, for termination to occur, two events would have to first transpire: (1) NPF would have to decide not to effect the merger; and (2) MCA would have to opt to terminate the Agreement rather than agree to an extension of time for the effectiveness of the merger.

It is unlikely that MCA would choose to terminate the Agreement given the amount of time that it took to finalize the Agreement, as well as MCA's interests in consummating the transaction. Rather, it is more likely that MCA, on request from NPF, would agree to extend the closing date of the Agreement to give the National Park Service additional time to select the new concessioner to assume NPF's obligations to MCA under the Agreement.

MORRISON & FOERSTER

Joan Reiss
March 22, 1993
Page Three

Please contact me if you have further questions
regarding this issue.

Very truly yours,


Sarah M. Rockwell

ISBN 0-16-041759-7



90000

9 780160 417597